SUPREME COURT OF THE UNITED STATES.

No. 88.

DAVID MAXWELL AND THOS. WATKINS, AND MARY WATKINS HIS WIFE, PL'FFS IN ERROR,

vs.

ISRAEL M. MOORE, MADISON M. MORRIS, HENRY MORRIS, JAMES P. KELLEM, JOHN F. BLACK, JAMES F. BATTE, AND WILLIAM M. CRAIG.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

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STATE OF ARKANSAS, *sct.*

Be it remembered, that at a supreme court of the State of Arkansas, begun and held at the court-house in the city of Little Rock, in said State, on the first Monday in January, A. D. 1857, before the Hon. Elbert H. English, chief justice, and the Hon. Christopher C. Scott and the Hon. Thomas B. Hanly, judges, were the following proceedings, in the case of

DAVID MAXWELL et al., Appellants, vs. ISRAEL M. MOORE et al., Appellees. } Appeal from White circuit court.

Be it remembered, that heretofore, to wit, on the first day of January, A. D. 1855, the said appellants filed in the office of the clerk of said supreme court the transcript of the record of said circuit court in said cause, which is in the following words, to wit:

Transcript of Ct. Court.

Pleas before the Honorable Beaufort H. Neely, judge of the White circuit court, on the 27th day of June, A. D. 1854.

DAVID MAXWELL, and ALEXANDER S. WALKER, and Mary Walker, his wife, Plaintiffs, vs. ISRAEL M. MOORE, MADISON M. MORRIS, HENRY Morris, James P. Kellem, John F. Black, James F. Batte, William M. Craig, and William B. Isbell, Defendants. } In Ejectment.

On the 24th day of July, 1851, come the plaintiffs in this case and file their declaration herein, which is in the words and figures following, to wit:

Declaration.

STATE OF ARKANSAS, *White county, sct.*

In the Circuit Court of said county, in vacation after May term, A. D. 1851.

James Walker and David Maxwell, plaintiffs in this suit, by attorney, complain of Israel M. Moore, Richard J. Moore, Madison M. Morris, Henry Morris, James P. Kellem, John F. Black, James F. Batte, William M. Craig, William B. Isbell and Jesse N. Cypert, defendants herein, of a plea, wherefore they, the said defendants, with force and arms, entered into and upon the following described tract of land, to wit, the northeast quarter of section numbered ten, in township numbered seven north, range numbered seven west, as delineated upon and by the public surveys of

the United States, containing about one hundred and sixty acres, with the rights, members and appurtenances thereunto belonging, situated and being in said county of White, and ejected them the said plaintiffs therefrom.

For that the said plaintiffs, on the first day of July, in the year of our Lord one thousand eight hundred and fifty-one, in said county of White, were entitled to the possession of the said premises, to wit, the said northeast quarter of said section numbered ten, in township numbered seven north, range numbered seven west, containing about one hundred and sixty acres of land, with the rights, members and appurtenances thereunto belonging, as delineated on and by the public surveys of the United States, and situated and being in the said county of White, and that they the said plaintiffs being so entitled to the possession thereof, the said defendants afterwards, to wit, on the same day and year last aforesaid, in the county aforesaid, with force and arms, entered into and upon the said tract of land, with the rights, members and appurtenances thereunto belonging, and ejected them the said plaintiffs therefrom, and other wrongs to the said plaintiffs then and there did, to their great damage, and against the peace of the said State of Arkansas, and that said defendants still unlawfully withhold from the said plaintiffs the possession thereof; wherefore the said plaintiffs say that they are injured and have sustained damage to the value of ten thousand dollars, and therefore they sue, &c.

A. FOWLER, *Attorney for the Plaintiffs.*

The clerk of White circuit court will immediately issue a writ of summons on the foregoing declaration, returnable, &c., according to law.

Little Rock, July 17, 1851.

A. FOWLER, *Attorney for Plaintiffs.*

Filed and writ issued this 24th day of July, A. D. 1851.

SAMUEL MORGAN, *Clerk.*

By R. S. BELL, *D. C.*

The writ of summons issued in this case and referred to above is in the words and figures following, to wit:

Summons.

STATE OF ARKANSAS,

County of White, sct.

The State of Arkansas to the Sheriff of White county, greeting:

You are hereby commanded to summon Israel M. Moore, Richard J. Moore, Madison M. Morris, Henry Morris, James P. Kellem, John F. Black, James F. Batte, William M. Craig, William B. Isbell, and Jesse N. Cypert, if they be found within your bailiwick, to appear before the judge of our circuit court of said county of

White, at the court-house in said county, on the first day of our next November term, at a court to be holden on the fourth Monday of November next, then and there to answer James Walker and David Maxwell, of a plea wherefore they the said defendants, with force and arms, entered into and upon the following described tract of land, to wit, the northeast quarter of section numbered ten, in township numbered seven north, and range numbered seven west, as delineated upon and by the public surveys of the United States, containing about one hundred and sixty acres, with the rights, members and appurtenances thereunto belonging, situated and being in said county of White, and ejected them, the said James Walker and David Maxwell, therefrom, to the damage of the said James Walker and David Maxwell of ten thousand dollars; and have you then there this writ.

In testimony whereof I, Samuel Morgan, clerk of said county, have hereunto set my hand as such, and affixed the seal of said court, this 24th day of July, A. D. 1851. [L. S.]

SAMUEL MORGAN, *Clerk.*
By R. S. BELL, *D. C.*

Upon the back of the original summons above named and set forth is endorsed the sheriff's return in the words and figures following, to wit:

Sheriff's return.

I executed the within writ by reading the same in presence and hearing of the within named J. P. Kellem, W. M. Craig, James F. Batte, Madison M. Morris and Wm. B. Isbell, in the town of Searcy, on the 24th day of July, A. D. 1851.

J. M. BOWDEN, *Sh'ff.*

Executed the within writ by reading the same in the presence and hearing of the within named Henry Morris, in the town of Searcy, on this the 25th day of July, A. D. 1851.

J. M. BOWDEN, *Sh'ff.*

Executed the within writ on J. F. Black and Jesse N. Cypert by them, the said J. F. Black and Jesse N. Cypert, acknowledging service *on* the same, this the 26th day of July, A. D. 1851.

J. M. BOWDEN, *Sh'ff.*

I executed the within writ on the within named J. M. Moore and Richard J. Moore by reading the same in the presence and hearing of the said J. M. Moore and Richard J. Moore, in the town of Searcy, on this the 2d day of August, A. D. 1851.

J. M. BOWDEN,
Sh'iff of White county, Ark's.

Received and filed November 17, 1851.

S. MORGAN, *Clerk.*
By R. S. BELL, *D. C.*

And afterwards, to wit, on the 26th day of November, A. D. 1851, the following proceedings were had and entered of record in this case, to wit:

Filing plea and entry of similiter.

JAMES WALKER AND DAVID MAXWELL, Plaintiffs,
vs.
ISRAEL M. MOORE and others, Defendants. } Ejectment.

This day came the parties aforesaid by their attorneys, and the defendants, by their attorneys, filed their joint plea of the general issue herein, to which plea the plaintiffs, by their attorney, enter their similiter in short on the record by consent, and on motion of the said defendants, by attorney, it is ordered that depositions taken on the part of said defendants be published and filed, which is done accordingly.

The plea of the defendants referred to in the above and foregoing order is in the words and figures following, to wit:

Plea.

In the White Circuit Court, at November term, 1851.

ISRAEL M. MOORE, RICHARD J. MOORE, Madison M. Morris, Henry Morris, James P. Kellem, John F. Black, James F. Batte, William M. Craig, William B. Isbell, and Jesse N. Cypert, Defendants,
advs.
JAMES WALKER AND DAVID MAXWELL, Plaintiffs. } In Ejectment.

And the said defendants by attorney come and say that they are not guilty of unlawfully withholding the premises claimed by the said plaintiffs, as alleged in the said declaration of the said plaintiffs, and of this the said defendants put themselves upon the country, &c.

SCOTT & McCONAHA,
JORDAN, ROGERS & PATTERSON,
WATKINS & CURRAN,
Atto. for Def'ts.

And afterwards, to wit, on the 25th day of May, A. D. 1852, the following proceedings were had and entered of record in this case, to wit:

Suggestion of Walker's death and appearance of heirs.

JAMES WALKER AND DAVID MAXWELL, Pl'ffs,
vs.
ISRAEL M. MOORE and others, Def'ts. } In Ejectment.

Comes the said David Maxwell by atttorney, and suggests the death of his co-plaintiff, James Walker, which admitted, &c.

Whereupon Alexander S. Walker and Mary Walker, his wife, by A. Fowler, esq., their attorney, and John M. Walker, as heirs-at-law and devisees of said James Walker, deceased, pray the court to be substituted as plaintiffs in this cause in the room and stead of the said James Walker, deceased, jointly with the said David Maxwell, and the said John M. being a minor, comes into court and applies for the appointment of Thomas J. Rogers as his next friend to prosecute this suit; and the said Rogers also appearing in court, filed his written consent to act as such next friend. Whereupon it is ordered by the court that the said Thomas J. Rogers be and he is appointed such next friend, and that the said Alexander S. Walker, and Mary his wife, and the said John M., be substituted as such plaintiffs, &c., and that the cause progress in their names jointly with the said David Maxwell, &c. To which opinion and decision of the court *is* so permitting this suit to be revived said defendants excepted at the time, and tendered their bill of exceptions in respect thereof, which was signed, sealed, filed, and ordered to form part of the record of this cause.

The bill of exceptions mentioned and referred to above is in the words and figures following, to wit:

Exceptions by Def'ts.

DAVID MAXWELL AND JAMES WALKER
vs.
ISRAEL M. MOORE and others. } In Ejectment.

Be it remembered, that this day the counsel of said plaintiffs in this cause appeared in court here, and suggested and proved to the court that said plaintiff, James Walker, has departed this life since the last term of this court, having made and published his last will and testament, and that Alexander S. Walker and Mary his wife, and John M. Walker, are his sole devisees of the property in controversy, as shown by the will; and thereupon it was moved by said counsel that said John M. and Alexander S. and wife should be substituted and made plaintiffs in this suit in the place and stead of said James Walker, deceased; to which motion said defendants objected, and in support of their objection introduced and read to the court the said last will and testament of said James, dec'd, which will has been duly probated and recorded, and the same with the said probate is in the words and *and* figures following, to wit:

Walker's Will.

Know all men by these presents, that I, James Walker, of the county of White and State of Arkansas, being in ill health, but of sound and disposing mind and memory, do make and publish this

my last will and testament, hereby revoking all wills by me at any time heretofore made.

First. I hereby constitute and appoint my wife Mary Walker and Alexander S. Walker my executrix and executor of this my last will, directing my said executrix and executor to pay all just debts and funeral expenses, and the legacies hereinafter given, out of my estate.

Second. I give and bequeath to my granddaughter, Emila Sofrona Walker, minor heir of my son, Crawford Walker, deceased, certain negro slaves for life, which slaves are severally named and described in a certain deed of gift made by me and bearing date 13th day of July, A. D. 1849, and which deed of gift is now duly recorded in the recorder's office of said county of White, in Record Book D, pages 96, 97, 98, and 99. To my said executrix and executor I give full power and authority to sell and convey three certain tracts of land now owned by me, to wit: the one lying on the Arkansas river, in the county of Pulaski, and State aforesaid, containing 456 acres, or thereabouts; one lying in the said county of White and State aforesaid, and being about three miles south or southwest from the town of Searcy, containing two hundred and forty acres, commonly known as the Branch or Spring land; the other is one-half the interest in the undivided north half of section twelve, in township seven north of the base line, in range seven west of the fifth principal meridian. And in the event of the death of my wife, the said Mary Walker, who is the said executrix herein named, previous to effecting the sale of said tracts of land above named, I give my executor, the said Alexander S. Walker, full power and authority to sell and convey the same; and after the same is so sold, the proceeds thereof to be equally divided between my said wife and Alexander S. Walker, and my son, John M. Walker; or in the event of the death of my said wife previous to said sale being effected, then the proceeds thereof to be equally divided between Alexander S. Walker and John M. Walker, each to share and share alike.

4. The remainder of my estate, both real, personal, and mixed, I give and bequeath to my wife, Mary Walker, during her life: Nevertheless, that the slaves which I have placed in the care of and under the control of Alexander S. Walker and Mary his wife, which are described as follows, to wit: Rachel, aged about fifty years; Dick, a man, aged about (30) thirty; Ann his wife, aged about twenty-two years; Louis, a boy, aged about three years; Jacob, aged about one year; Frank, aged about seventeen years; Chuna, aged about sixteen years; Robert, aged about twenty-four years; Henry, aged about 12 years; and Rachel, a girl, aged about ten years—shall be and remain in the possession of the said Alexander S. Walker and Mary his wife, and that they have all the benefit arising from the labor of said slaves until there shall be

had a general division of my said estate, which is hereinafter mentioned, at which time they shall revert back and be and constitute a part and parcel of my said estate.

Fifth. That the balance of my slaves shall remain upon the plantation upon which I now reside during the lifetime of my wife Mary Walker; or in the event of her death, then to remain upon said plantation until my son John M. Walker shall arrive at the age of twenty-one years, at which period they, with the balance of my entire estate, to descend in equal shares to the said John M. Walker, and to my daughter Mary Walker and her bodily heirs; and in the event of the death of the said John M. Walker without bodily heirs, his entire interest in my said estate to descend to the said Mary Walker and her bodily heirs.

Sixth. And at the death of the said Mary Walker her entire interest in said slaves to descend in equal shares to her bodily heirs, with an equal share or child's part to her said husband, Alexander S. Walker, (provided he survives her) during his natural life; and at the death of the said Alexander S. Walker, said slaves to descend in equal shares to the bodily heirs of the said Alexander S. Walker and Mary Walker his wife.

In testimony whereof, I hereto set my hand and seal, and publish and declare this to be my last will and testament, in the presence of the witnesses named below, this 14th day of January, in the year one thousand eight hundred and fifty-two.

JAMES WALKER. [SEAL.]

Signed, sealed, published and declared by the said James Walker as and for his last will and testament, in his presence, and in the presence of each other, and at his request have subscribed our names as witnesses hereto.

JAMES G. ROBBINS,
LARRY HARROLL,
JOHN F. BLACK.

STATE OF ARKANSAS,
County of White, ss.

I, John F. Black, one of the subscribing witnesses to the annexed and foregoing instrument of writing, purporting to be the last will and testament of James Walker, late of White county, in the State of Arkansas, now deceased, being duly sworn, do depose and say that the said James Walker subscribed his name thereto in my presence, and declared the same to be his last will and testament, and that at the request of him the said testator, I subscribed the same as a witness thereto in his presence, and in the presence of the other subscribing witnesses to the same. So help me God.

JNO. F. BLACK.

my last will and testament, hereby revoking all wills by me at any time heretofore made.

First. I hereby constitute and appoint my wife Mary Walker and Alexander S. Walker my executrix and executor of this my last will, directing my said executrix and executor to pay all just debts and funeral expenses, and the legacies hereinafter given, out of my estate.

Second. I give and bequeath to my granddaughter, Emila Sofrona Walker, minor heir of my son, Crawford Walker, deceased, certain negro slaves for life, which slaves are severally named and described in a certain deed of gift made by me and bearing date 13th day of July, A. D. 1849, and which deed of gift is now duly recorded in the recorder's office of said county of White, in Record Book D, pages 96, 97, 98, and 99. To my said executrix and executor I give full power and authority to sell and convey three certain tracts of land now owned by me, to wit: the one lying on the Arkansas river, in the county of Pulaski, and State aforesaid, containing 456 acres, or thereabouts; one lying in the said county of White and State aforesaid, and being about three miles south or southwest from the town of Searcy, containing two hundred and forty acres, commonly known as the Branch or Spring land; the other is one-half the interest in the undivided north half of section twelve, in township seven north of the base line, in range seven west of the fifth principal meridian. And in the event of the death of my wife, the said Mary Walker, who is the said executrix herein named, previous to effecting the sale of said tracts of land above named, I give my executor, the said Alexander S. Walker, full power and authority to sell and convey the same; and after the same is so sold, the proceeds thereof to be equally divided between my said wife and Alexander S. Walker, and my son, John M. Walker; or in the event of the death of my said wife previous to said sale being effected, then the proceeds thereof to be equally divided between Alexander S. Walker and John M. Walker, each to share and share alike.

4. The remainder of my estate, both real, personal, and mixed, I give and bequeath to my wife, Mary Walker, during her life: Nevertheless, that the slaves which I have placed in the care of and under the control of Alexander S. Walker and Mary his wife, which are described as follows, to wit: Rachel, aged about fifty years; Dick, a man, aged about (30) thirty; Ann his wife, aged about twenty-two years; Louis, a boy, aged about three years; Jacob, aged about one year; Frank, aged about seventeen years; Chuna, aged about sixteen years; Robert, aged about twenty-four years; Henry, aged about 12 years; and Rachel, a girl, aged about ten years—shall be and remain in the possession of the said Alexander S. Walker and Mary his wife, and that they have all the benefit arising from the labor of said slaves until there shall be

had a general division of my said estate, which is hereinafter mentioned, at which time they shall revert back and be and constitute a part and parcel of my said estate.

Fifth. That the balance of my slaves shall remain upon the plantation upon which I now reside during the lifetime of my wife Mary Walker; or in the event of her death, then to remain upon said plantation until my son John M. Walker shall arrive at the age of twenty-one years, at which period they, with the balance of my entire estate, to descend in equal shares to the said John M. Walker, and to my daughter Mary Walker and her bodily heirs; and in the event of the death of the said John M. Walker without bodily heirs, his entire interest in my said estate to descend to the said Mary Walker and her bodily heirs.

Sixth. And at the death of the said Mary Walker her entire interest in said slaves to descend in equal shares to her bodily heirs, with an equal share or child's part to her said husband, Alexander S. Walker, (provided he survives her) during his natural life; and at the death of the said Alexander S. Walker, said slaves to descend in equal shares to the bodily heirs of the said Alexander S. Walker and Mary Walker his wife.

In testimony whereof, I hereto set my hand and seal, and publish and declare this to be my last will and testament, in the presence of the witnesses named below, this 14th day of January, in the year one thousand eight hundred and fifty-two.

JAMES WALKER. [SEAL.]

Signed, sealed, published and declared by the said James Walker as and for his last will and testament, in his presence, and in the presence of each other, and at his request have subscribed our names as witnesses hereto.

JAMES G. ROBBINS,
LARRY HARROLL,
JOHN F. BLACK.

STATE OF ARKANSAS,
County of White, ss.

I, John F. Black, one of the subscribing witnesses to the annexed and foregoing instrument of writing, purporting to be the last will and testament of James Walker, late of White county, in the State of Arkansas, now deceased, being duly sworn, do depose and say that the said James Walker subscribed his name thereto in my presence, and declared the same to be his last will and testament, and that at the request of him the said testator, I subscribed the same as a witness thereto in his presence, and in the presence of the other subscribing witnesses to the same. So help me God.

JNO. F. BLACK.

Sworn to and subscribed before me, this 6th day of March, 1852.

SAMUEL MORGAN, *Clerk.*
By R. S. BELL, *D. C.*

STATE OF ARKANSAS,
County of White, ss.

I, Jacob G. Robbins, one of the subscribing witnesses to the annexed and foregoing instrument of writing, purporting to be the last will and testament of James Walker, late of White county, in the State of Arkansas, now deceased, being duly sworn, do depose and say that the said James Walker subscribed his name thereto in my presence and declared the same to be his last will and testament, and that at the request of him, the said testator, I subscribed the same as a witness thereto in his presence, and in the presence of the other subscribing witnesses to the same. So help me God.

JACOB G. ROBBINS.

Sworn to and subscribed before me, this 12th day of March, 1852.

SAMUEL MORGAN, *Clerk.*
By R. S. BELL, *D. C.*

The foregoing is a true copy of the original instrument purporting to be the last will and testament of James Walker, deceased, together with the probate of the same filed for record in my office, and recorded this 12th day of March, A. D. 1852.

SAMUEL MORGAN, *Clerk.*
By R. S. BELL, *D. C.*

And this being all the evidence introduced in respect of said application, the court sustained said motion to substitute said devisees, and made an order directing that this suit should be revived, and progress in the names of said devisees, as co-plaintiffs with said Maxwell; to which opinion and decision of the court said defendant excepted at the time; and now at the same time presents this their bill of exceptions in respect of the matters aforesaid, and prays that the same may be signed and sealed by the judge of this court, and filed, enrolled, and ordered to form part of the record of the cause, which is accordingly done, this 25th day of May, 1852.

BEAUFOR H. NEELY, [SEAL.]
Judge of White Ct. Court.

Empanel a Jury.

And afterwards, to wit, on the 23d day of June, 1853, the following proceedings were had and entered of record in this cause, to wit:

DAVID MAXWELL, ALEXANDER S. WALKER, and Mary, his wife, and John M. Walker, by Thomas J. Rodgers, his next friend, Pl'ffs,
vs.
ISRAEL M. MOORE, RICHARD J. MOORE, MADISON M. Morris, Henry Morris, James P. Kellem, John F. Black, James F. Batte, William M. Craig, William B. Isbell and Jesse N. Cypert, Defendants.
} In Ejectment.

Now at this day come the said parties by their respective attorneys, and thereupon issue being joined, came a jury, to wit: William Kindall, Thomas F. Butt, Samuel D. Key, Perry Moore, Lewis J. Bevill, William B. Wilkes, Americus V. Vanmeter, William A. Andrews, Washington Montgomery, Ambrose G. Cochrane, James A. Neavill and Joseph Kniffin, twelve good and lawful men of White county, who were duly empanelled and sworn, well and truly to try the issue joined between the said plaintiffs and the said defendants herein.

Nonsuit.

And afterwards, to wit, on the 24th day of June, 1853, the following proceedings were had and entered of record in this case, to wit:

DAVID MAXWELL, ALEXANDER S. WALKER, and Mary his wife, and John M. Walker, a minor, who sues by Thomas J. Rodgers, his next friend, Plaintiffs,
vs.
ISRAEL M. MOORE, RICHARD J. MOORE, MADISON M. MORRIS, Henry Morris, James P. Kellem, John F. Black, James F. Batte, William M. Craig, William B. Isbell and Jesse N. Cypert, Defendants.

At this day come said parties, and also come the jury aforesaid, whereupon said plaintiffs say they will not further prosecute this suit, and elect to take a nonsuit in this behalf. It is therefore considered and adjudged by the court here, that said plaintiffs take nothing by this suit, and that they be and are hereby nonsuited in this behalf, and that said defendants go hence hereof without day, and recover against said David Maxwell, Alexander S. Walker, and Mary his wife, and said Thomas J. Rodgers, the next friend of said John M. Walker, all their costs in this suit in this behalf expended.

Motion, &c. to set aside nonsuit.

Whereupon said plaintiffs file their motion, supported by affidavit, to set aside the said judgment of nonsuit, and the court, after

hearing the argument of counsel thereon, takes time to consider thereof.

The motion mentioned and referred to above is in the words and figures following, to wit:

In the Circuit Court, county of White, June term, A. D. 1853.

DAVID MAXWELL and the devisees of JAMES WALKER, deceased, Plaintiffs, versus ISRAEL M. MOORE and others, Defendants. } Ejectment.

And the said plaintiffs, by attorney, come and move the court to set aside the nonsuit entered in this case, and reinstate the case on the docket, upon the grounds set forth in the following affidavits.

A. FOWLER, *Atto.*

And David Maxwell, one of said plaintiffs, being first duly sworn, states, that at a former term of this court he had Giles Baker, a resident of this county, subpœnaed as a witness, and he is not now in attendance in this case, as he ought to have been; that he expects and believes that he can prove by the evidence of said Baker, that the mother of Arthur McVey is dead, and died long before the plaintiffs in this suit acquired their title, under which they claim to recover in this case; that he was informed by his attorney that the depositions of said defendants on file, connected with the plaintiffs' title-deeds, with other evidences present, would sufficiently make out the death of the mother of said Allen, and show who were the heirs of the said Allen, and establish the right of the plaintiffs to recover; and also that the said plaintiffs had a legal right to read the depositions in evidence taken by the defendants, and was therefore taken by surprise by the exclusion of such depositions, and by the exclusion of the plaintiffs' title-deeds, and that he is in no doubt that, upon another trial of this cause, he can prove the death of said Allen's mother by said Baker, or by other legal evidence; could the defendant have anticipated, under the opinion of his attorney or otherwise, the exclusion of his said evidence, he would have been able to prove the same on the recent trial. He believes the plaintiffs have a meritorious cause of action, and this application to set aside the nonsuit is only that justice may be done on another trial.

DAVID MAXWELL.

Sworn to and subscribed before me this 24th day of June, 1853.

R. S. BELL, *Cl'k.*

Absalom Fowler, attorney for the plaintiffs, being first duly sworn, states that he gave the opinion to the said David Maxwell, as stated and set forth in the annexed affidavit, and he believes the

same to be the law of the land, and feels fully prepared to sustain such opinion before any tribunal in Arkansas, where the books containing the law upon the subject can be obtained, and they can be at Little Rock; that the clear right of one party to use his adversary's depositions he considers as well settled as any other legal right, and never until to-day heard it controverted, and never saw a legal first principle, or saw a reported case controverting it, though he can produce at least half a score of decisions of courts of high character fully sustaining the principle, and in practice has often used his adversary's depositions, and never before heard of any objection, or that any doubt existed as to such right. He, therefore, gave such opinion to his client in good faith, and still firmly believes it to be correct, and was greatly surprised by the decision of the court excluding such depositions, upon which this affiant has long relied as important evidence for the plaintiffs, and upon which, with the other evidence present, he still believes they were fully entitled to recover in this case.

A. FOWLER.

Sworn to and subscribed before me this 24th day of June, 1853.

R. S. BELL, *Cl'k.*

And afterwards, to wit, on the 25th day of June, 1853, the following proceedings were had, and entered of record in this case, to wit:

Nonsuit set aside.

DAVID MAXWELL, ALEXANDER S. WALKER and Mary his wife, and John M. Walker, a minor, who sues by his next friend, Thomas J. Rodgers, Plaintiffs,
vs.
ISRAEL M. MOORE, RICHARD J. MOORE, MADISON M. MORRIS, Henry Morris, James P. Kellem, John F. Black, James F. Batte, William M. Craig, William B. Isbell, and Jesse N. Cypert, Def'ts.
} In Ejectment.

At this day came said parties, and the court being now well and sufficiently advised of and concerning the motion made by said plaintiffs to set aside the judgment of nonsuit entered in this case on yesterday, is of opinion that said motion ought to be sustained upon the payment by the plaintiffs of all the costs that have accrued in this cause. It is therefore considered that said judgment of nonsuit be and the same is hereby set aside, and this suit reinstated upon the docket; and it is further considered and adjudged by the court that said defendants do have and recover against said David Maxwell, Alexander S. Walker and Mary his wife, and said Thomas

J. Rodgers, the next friend of said minor plaintiff, John M. Walker, all their costs in this behalf expended, and have execution thereof.

And afterwards, to wit, on the 20th day of June, 1854, the following proceedings were had, and entered of record in this case, to wit:

J. M. Walker's death suggested.

DAVID MAXWELL, ALEXANDER S. WALKER and Mary Walker his wife, and John M. Walker, a minor, who sues by Thomas S. Rogers, his next friend, Pl'ffs,
vs.
ISRAEL M. MOORE, RICHARD J. MOORE, and others, Def'ts.
} In Ejectment.

Now at this day came the parties aforesaid by their respective attorneys, and the plaintiff's attorney, A. Fowler, esquire, suggested the death of John M. Walker, one of the plaintiffs in this suit; and the same not being denied, but is admitted, it is, on motion, considered and ordered that this suit abate as to the said John M. Walker, and progress in the names of the surviving plaintiffs, David Maxwell, Alexander S. Walker and Mary Walker his wife.

And afterwards, to wit, on the 22d day of June, 1854, the following proceedings were had, and entered of record in this case, to wit:

DAVID MAXWELL, ALEXANDER S. WALKER and Mary Walker his wife, Pl'ffs,
vs.
ISRAEL M. MOORE, RICHARD J. MOORE, MADISON M. MORRIS, Henry Morris, James P. Kellem, John F. Black, James F. Batte, William M. Craig, William B. Isbell, and Jesse N. Cypert, Def'ts.

At this day came the parties aforesaid by their respective attorneys, and thereupon came a jury, to wit: Joel S. Redus, Samuel D. Key, Samuel Critz, Joshua B. Craw, Robert M. Exum, Harrison Brown, Hubbard P. Heard, Henry Glidden, Green C. Caruthers, Richard Dickens, John M. Boggs and Daniel H. Walker, twelve good and lawful men of the county of White, who were duly elected, empanelled and sworn, according to law, as a jury in this case.

And afterwards, to wit, on the 22d day of June, 1854, the following proceedings were had and entered of record in this case, to wit:

Dismissed as to R. J. Moore and Cypert.

DAVID MAXWELL, ALEXANDER S. WALKER, and Mary Walker his wife, Pl'ffs,
vs.
ISRAEL M. MOORE, RICHARD J. MOORE, Madison M. Morris, Henry Morris, James P. Kellem, John F. Black, James F. Batte, William M. Craig, William B. Isbell and Jesse N. Cypert, Defendants.
} In Ejectment.

At this day came the parties aforesaid by their attorneys, and the said plaintiffs by their attorney enter a nolle prosequi in this case, as to the said defendants, Richard J. Moore and Jesse N. Cypert. It is therefore considered that this case be dismissed as to them, and progress as against said other defendants.

And afterwards, to wit, on the 27th day of June, 1854, the following proceedings were had and entered of record in this case, to wit:

Trial—Verdict and Judgment.

DAVID MAXWELL, ALEXANDER S. WALKER, and Mary Walker his wife, Plaintiffs,
vs.
ISRAEL M. MOORE, MADISON M. MORRIS, Henry Morris, James P. Kellem, John F. Black, James F. Batte, William M. Craig, and William B. Isbell, Defendants.
} In Ejectment.

And now at this day came the parties aforesaid by their respective attorneys, as well as the jury empanelled and sworn in this case on a former day of this term, and the said jury having heard all the evidence in the case, the instructions of the court, as well as the argument of counsel, retired in care of Amos G. Matthews, deputy sheriff, to consider of their verdict, and being absent a short time, returned into court here the following verdict, to wit: "We, the jury, find the defendants not guilty, in manner and form as charged in the within declaration. Signed J. B. Craw, foreman." It is therefore considered and adjudged by the court, that the said plaintiffs take nothing by their suit, and that said defendants go hence hereof without day, and recover of and from the said plaintiffs, David Maxwell, Alexander S. Walker, and Mary Walker his wife, all their costs in this suit in this behalf laid out and expended, and have execution thereof.

Be it remembered, that during the progress of the trial of this case from day to day, at the present term of this court, the plaintiffs as well as the defendants in this case, by their attorney, ex-

cepted to sundry opinions and decisions of the court in this case, and on motion further time is allowed them to prepare and file their written exceptions.

And afterwards, to wit, on the 28th day of June, 1854, the following proceedings were had and entered of record in this case, to wit:

Appeal.

DAVID MAXWELL, ALEXANDER S. WALKER, and Mary Walker his wife, Plaintiffs, vs. ISRAEL M. MOORE, MADISON M. MORRIS, Henry Morris, James P. Kellem, John F. Black, James F. Batte, William M. Craig and William B. Isbell, Defendants.	In Ejectment.

And now, at this day, come the said plaintiffs, and tender their bill of exceptions to the several decisions and judgments of the court in this case, and pray that their bill of exceptions may be signed, sealed, and made a part of the record in this case, which is done accordingly.

And at the same time came the said plaintiff, David Maxwell, and filed his affidavit and prayer for an appeal to the supreme court of the State of Arkansas, which is accordingly granted by the court.

Whereupon came David Maxwell as principal, and Absalom Fowler as security, and acknowleged themselves to owe and be indebted to Israel M. Moore, Madison M. Morris, Henry Morris, James P. Kellem, John F. Black, James F. Batte, William M. Craig, and William B. Isbell, in the sum of five hundred dollars, to be made and levied of their respective goods and chattels, lands and tenements, but to be void upon condition that the said appellants in this suit will prosecute their appeal with due diligence to a decision in the supreme court; and if the judgment appealed from is affirmed, or their appeal dismissed, they shall pay whatever of costs have been recovered against them by the judgment of this court, or shall otherwise perform the judgment of the circuit court, and shall also pay the costs and damages that may be adjudged against them in the supreme court upon their said appeal, otherwise to remain in force, &c.

The prayer and affidavit above referred to is in the words and figures following, to wit:

In White Circuit Court, June term, 1854.

DAVID MAXWELL AND ALEXANDER S. WALKER, and Mary his wife, Plaintiffs, versus ISRAEL M. MOORE, MADISON M. MORRIS, Henry Morris, James P. Kellem, John F. Black, James F. Batte, William M. Craig, and William B. Isbell, Def'ts.	In Ejectment.

And the said plaintiffs come and pray and make their appeal to the supreme court from the judgment rendered against them in this case. And the said David Maxwell, being first thereto duly sworn, states that such appeal is not made for vexation or delay, but because he, the affiant, verily believes that the appellants, the said plaintiffs, are aggrieved by the said judgment of the court in this case.

DAVID MAXWELL.

Sworn to and subscribed in open court, June 29th, 1854.

R. S. BELL, *Clerk.*

The said plaintiffs' bill of exceptions referred to above is in the words and figures following, to wit:

Pl'ffs' Bill of Exceptions.

In the White Circuit Court, June term, A. D. 1854.

DAVID MAXWELL AND ALEXANDER S. WALKER, and Mary Walker his wife, Pl'ffs, versus ISRAEL M. MOORE, WM. M. MORRIS, Henry Morris, James P. Kellem, John F. Black, James F. Batte, William M. Craig, and William B. Isbell, Defendants.	In Ejectment.

Be it remembered, that on the trial of this cause before the jury, the plaintiffs, to sustain their right to recover, read in evidence the exemplification of a patent, purporting to be duly issued, and signed by the President of the United States, and bearing date on the 24th day of May, 1842, on certificate No. 34, and stating that in pursuance of an act of Congress entitled "An act authorizing certain soldiers of the late war to surrender bounty lands drawn by them, and to locate others in lieu thereof," approved May 22, 1826, and continued in force by an act passed 27th of May, 1840, Allen McVey deposited in the General Land Office a relinquish-

ment to the United States of the lands theretofore patented to him on warrant No. 20,032, and also a certificate of the register of the land office at Little Rock designating the tract entered by him in lieu thereof; and therefore granting to the said Allen McVey, late a private in Baker's company, first regiment of infantry, a certain tract of land containing one hundred and sixty acres, being the northeast quarter of section ten, township seven north, range seven west, in the tract appropriated for military bounties in Arkansas, and to his heirs and assigns forever; which exemplification was read in evidence against the objection of said defendants, that no showing had been made of the loss or destruction of the original patent.

The plaintiffs then offered in evidence of William Cook, after first showing his death since the taking thereof, to the reading of two sentences of which deposition the defendants objected, and the court suppressed said two sentences objected to, and would not permit them read; to which decision of the court in suppressing said two sentences the said plaintiffs excepted at the time, and time having been given them at the time, now present this their bill of exceptions thereto; and the residue of said deposition was read in evidence without objection. And which said deposition, with the two sentences thereof so suppressed, and marked in the margin "suppressed by the court," the clerk is directed to incorporate herein, as a part of this bill of exceptions, copied at full length, leaving out the caption thereof, and certificates, commission and notice, which were not objected to; the said deposition being marked as Exhibit A, a part of this bill of exceptions, and so authenticated by the court.

Plaintiffs then proved by Green L. McCarroll that he was intimately acquainted with the late McVeys when they resided in the western district of Tennessee, in Madison county; knew the family 15 or 16 years ago, and perhaps longer; witnesses resided there also. Old Mrs. McVey was called "old Sally," and witness knew some of her children, all that were then living, who were Reuben McVey, King McVey, Smith McVey, and his wife Polly, and a daughter he thinks they called Cynthia. Old Sally had another son whose name he does not recollect, but thinks his name was Lorenzo McVey; and he died there without having been married. Old Sally has been dead some twelve or thirteen years. Reuben McVey removed to Mississippi, and report came back that he died there: the family all said he was dead a year or two, witness thinks, after old Sally died, and his brothers and sisters all said he was dead. Reuben McVey was married and had several children. Cynthia, the daughter, was married to Nathan Francis, who lived in the same neighborhood. Witness often heard all the members of the McVey family speak of another brother who had come to Arkansas and died here, but didn't recollect his name; witness never knew Allen McVey or his father.

Plaintiffs then proved, by John W. McCarrol, that he knew the McVey family in the western district of Tennessee, in Madison county, and the old lady's name was Sally; and knew her sons, Smith McVey, Reuben and Lorenzo, and King, and a daughter called Cynthia; was intimate in the family and heard all of them say that there was another brother of them named Allen McVey, who had removed to Arkansas and died; and also heard them and Reuben McVey's father-in-law say that Reuben had died in the State of Mississippi. Old Sally McVey died 12 or 14 years ago, and Lorenzo died unmarried and without children. Witness don't know the names of Reuben's children, or what became of them. Reuben was 35 or 40 years old when he died, which was about nine years ago.

Plaintiffs then read in evidence a deed of King McVey against the objection of the defendants that it purported to be acknowledged before a deputy clerk, and the acknowledgment did not show the word consideration, and because said King was not sufficiently proved to be an heir of the said Allen McVey; a true copy of which, with said certificates of acknowledgment and registry, is as follows, to wit:

I, King McVey, brother of Allen McVey, deceased, who was a soldier in the late war with Great Britain, and being his legal heir and representative, have this day bargained and sold, and do hereby transfer and convey, alien, enfeoff, and confirm unto James Walker and David Maxwell, of the county of White and State of Arkansas, and their heirs and assigns forever, for the consideration of five hundred dollars lawful money to me in hand paid, a tract of land in the county of White, State of Arkansas, containing one hundred and sixty acres, and being the northeast quarter of section ten in township seven (7) north, range seven west of the fifth principal meridian; to have and to hold the said granted premises, with all the privileges thereunto belonging, to the said James Walker and David Maxwell, their heirs and assigns forever. I do covenant with the said Walker and Maxwell, that I am lawfully seized of said land, have a good right to convey it, and that the same is unencumbered. I do further covenant and bind myself, my heirs and representatives, to warrant and forever defend the title of land so sold to said Walker and Maxwell, their heirs and assigns forever, against any lawful claim or claims to be made by myself or any person claiming under or through me, but no further.

In witness whereof, I hereunto this day set my hand and seal the second day of May, 1857.

his
KING ⋈ McVEY.
mark.

Test: MOSES C. ALEXANDER.
E. F. McKNIGHT.

[REC LXXXVIII., D. T., 1858.]—3

STATE OF *Arkansas, Madison county.*

Personally appeared before me, Thomas W. Garnewell, clerk of the county court of said county, King McVey, bargainer to the foregoing deed, with whom I am personally acquainted, and acknowledged the execution of the same to be his act and deed for the purposes therein contained.

Witness my hand and seal of office this 13th day of June, 1851.

[L. S.] THOMAS W. GARNEWELL, *Cl'k.*
By JOHN M. PARKER, *D. C.*

STATE OF TENNESSEE, *Madison county.*

I, Wyatt Mooring, chairman and acting justice of the peace in and for said county, do hereby certify that Thomas W. Garnewell, whose name appears upon the foregoing certificate, is now, and was at the time of signing the same, the acting clerk of the county court of said county, duly elected, qualified and commissioned; therefore all of his official acts are entitled to full force and virtue.

Given under my hand at office this 13th day of June, 1851.

WYATT MOORING,
Chairman and Presiding Justice of the County Court of said county.

STATE OF TENNESSEE, *Madison county.*

I, Thomas W. Garnewell, clerk of the county court of said county, do certify that Wyatt Mooring, whose name appears to the foregoing certificate, is, and was at the time of signing the same, chairman and acting justice of the peace in and for said county, duly elected, qualified and commissioned; therefore all his official acts are entitled to full faith and credit.

Given under my hand and seal of office this 13th day of June, 1851.

[L. S.] THOMAS W. GARNEWELL, *Clerk.*
By JOHN M. PARKER, *D. C.*

Filed for record July 1st, 1851.

SAMUEL MORGAN, *Clerk.*
By R. S. BELL, *D. C.*

STATE OF ARKANSAS, *County of White, ss.*

I, Samuel Morgan, clerk of the circuit court and ex officio recorder in and for the county of White aforesaid, do certify that the annexed and foregoing deed and certificate of acknowledgment was filed for record in my office the first day of July, 1851, and the same is now duly recorded in record-book F, pages 22, 23, and 24.

In testimony whereof, I hereunto set my hand and affix the seal of the said circuit court at office in Searcy, this 7th day of July, 1851.

[L. S.]

SAM'L MORGAN, *Clerk.*
By R. S. BELL, *D. C.*

Plaintiffs then offered in evidence the following deed, with the certificates of acknowledgment and registry thereto attached, of Nathan Francis and wife, and Thomas Smith and wife, coupled with the depositions of said Francis and Smith, taken by the defendants in this cause, and on file herein, to which the defendants objected on the same grounds that they had to the said deed of King McVey, and upon the ground that the certificate of acknowledgment attached thereto as to the wives, Lucinda Francis and Mary Smith, did not show a compliance with the statute in such case provided on the face of the certificate, so as to pass the titles of married women; and as to said depositions, on the ground that they were taken by the defendants; which objection the court sustained as to the sufficiency of said certificate as to the two wives, and refused to let said deed be read as the deed of said Lucinda and Mary, and excluded the same as to them on that ground alone, to which decision of the court in excluding the same as the deed of the said Lucinda and Mary the said plaintiffs excepted at the time, and now, on leave of the court, tender this their bill of exceptions thereto; and the court permitted the said depositions to be read in evidence, and they were so read, and they remaining on file and marked Exhibit "B," authenticated by the court, are ordered to be and are made a part of this bill of exceptions, and to be copied therein as such, and said deed was permitted to be and was read in evidence as the deed of said Nathan Francis and Samuel Smith against defendants' objection, a true copy of which and of the certificates of acknowledgment and registry is as follows, to wit:

We, Samuel Smith and wife Mary D. Smith, Nathan Francis and wife Lucinda Francis, the brothers and sisters of Allen McVey, dec'd, who was a soldier in the late war with Great Britain, and being his legal heirs and representatives, have this day bargained and sold, and do hereby transfer and convey, alien and enfeoff, unto James Walker and David Maxwell, of the county of White, State of Arkansas, and their heirs and assigns forever, for the consideration of fifteen hundred dollars to us paid, a tract of land in the county of White, State of Arkansas, containing one hundred and sixty acres, bring the northeast quarter of section ten, township seven north, range seven west of the fifth principal meridian, being the same more or less; to have and to hold the same to the said James Walker and David Maxwell, their heirs and assigns, forever. We do covenant with the said Walker and Maxwell that we are lawfully seized of said land, have a good right to convey it, and that the same is unencumbered. We do further covenant and

bind ourselves, our heirs and representatives, to warrant and forever defend the title of said land to said Walker and Maxwell, their heirs and assigns forever, against any claim or claims to be made by ourselves, or any person or persons claiming through or under us, but no further.

In witness whereof, we have this day set our hands and seals this the 28th day of April, 1851.

SAMUEL his ⋈ mark. SMITH. [SEAL.]

NATHAN his ⋈ mark. FRANCIS. [SEAL.]

MARY D. SMITH. [SEAL.]

LUCINDA her ⋈ mark. FRANCIS. [SEAL.]

Test: W. W. BOYKEN,
SAMUEL S. SYKES,
E. Y. STARK, as to Mary D. Smith,
E. Y. STARK, as to Lucinda Francis.

STATE OF TENNESSEE, *Madison county.*

Personally appeared before me, Thos. W. Gramewell, clerk of the county court of said county, Samuel Smith and Nathan Francis, bargainers to the foregoing deed, with whom I am personally acquainted, and who acknowledged the execution of the same to be their act and deed, for the purpose therein contained; also personally appeared before me Mary D. Smith and Lucinda Francis (feme coverts), privately and apart from their husbands, the said Samuel Smith and Nathan Francis, and acknowledged the execution of said deed to have been done by them freely, voluntarily, and understandingly, without compulsion or restraint from their said husbands, and for the purposes therein expressed.

Witness Thomas W. Gamewell, clerk of said court, at office, this the 13th day of June, 1851.

[L. S.]

THOMAS W. GAMEWELL, *Clerk.*
By JOHN M. PARKER, *D. C.*

STATE OF TENNESSEE, *Madison county.*

I, Wyatt M. Mooring, chairman and acting justice of the peace in and for said county, do certify that Thomas W. Gamewell, whose name appears to the foregoing certificate, is, and was at the time of signing the same, acting clerk of the county court of said county, duly elected, qualified and commissioned; therefore all his official acts are entitled to full faith and credit.

Given under my hand at office, this 13th day of June, 1851.

[SEAL.]

WYATT MOORING,
Chairman and Presiding Justice of the County Court of said county.

STATE OF TENNESSEE, *County of Madison.*

I, Thomas W. Gamewell, clerk of the county court of said county, do certify that Wyatt Mooring, whose name appears to the foregoing certificate, is now, and was at the time of signing the same, chairman and acting justice of the peace in and for said county, duly elected, qualified and commissioned; therefore all of his official acts are entitled to full faith and credit.

Witness Thomas W. Gamewell, clerk of said court, at office, this the 13th day of June, 1851.

[L. S.]

THOS. W. GAMEWELL, *Clerk.*
By JOHN M. PARKER, *D. C.*

STATE OF ARKANSAS, *County of White, ss.*

I, Samuel Morgan, clerk of the circuit court and ex officio recorder in and for the county of White aforesaid, do hereby certify that the annexed and foregoing deed of conveyance was filed for record in my office the 1st day of July, A. D. 1851, and that the same is now duly recorded in record-book F, pages 19, 20, and 21.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said circuit court at office in Searcy, White county aforesaid, this the 7th day of July, 1851.

[L. S.]

SAMUEL MORGAN, *Clerk.*
By R. S. BELL, *D. C.*

The plaintiffs then offered in evidence a deed of William A. Lackey and wife, but the court refused to permit the same to be read as the deed of the said Ariadne Lackey, the wife, upon the ground, as objected to by the defendants, that the certificate of acknowledgment as to her was in substance so defective, and such a failure to comply with the statute in such case provided, as not to pass her title to the land mentioned therein; to which decision of the court, in refusing and excluding the same as the deed of the said Ariadne, the said plaintiffs excepted at the time, and now tender this their bill of exceptions thereto, and the court permitted the same to be and it was read as evidence, as the deed of the said William A. Lackey, against the objection of said defendants; a true copy of which deed, with the said certificates of acknowledgment and registry, is as follows, to wit:

I, William A. Lackey, of Henderson county, State of Tennessee, one of the heirs-at-law of Allen McVey, deceased, who was a soldier in the late war with Great Britain, have this day bargained and sold, and do hereby transfer and convey, alien, enfeoff unto James Walker and David Maxwell, of the county of White, and State of Arkansas, and their heirs forever, for the consideration of ten dollars to me in hand paid, a certain tract of land in the county of White, State of Arkansas, containing one hundred and

sixty acres, being my distributive share of the northeast quarter of section ten, in township seven north, of range seven west, of the principal meridian; to have and to hold the same to the said James Walker and David Maxwell, their heirs and assigns forever. I do covenant with the said Walker and Maxwell that I have a good right to convey said land, and that the same is unencumbered; and I do further bind myself, my heirs and assigns, to warrant and defend the title of the said land to the said Walker and Maxwell, their heirs and assigns forever, against the claim or claims of any person claiming through or under me, but no further. In witness whereof, I have hereunto set my hand and seal this 5th day of May, 1851.

WM. A. LACKEY. [SEAL.]

her
ARIADNE ⋈ LACKEY. [SEAL.]
mark.

Attest: G. H. SMITH,
W. F. HUGHS.

STATE OF TENNESSEE,
Hardeman County, ss.

Personally appeared before me, R. P. Neely, clerk of the county court of said county, W. A. Lackey, the within bargainer, with whom I am personally acquainted, and who duly acknowledged the due execution of the within deed to be his act and deed, for the purposes therein expressed, and on the day of its date; and Ariadne Lackey (the feme covert) having also personally appeared before me privately and apart from her husband, the said W. A. Lackey, acknowledged the execution of said deed to have been done by her freely, voluntarily and understandingly, without compulsion or restraint from her said husband, and for the purposes therein expressed.

Witness R. P. Neely, clerk of said court, at office, this 16th day of June, 1851.

[L. S.]

R. P. NEELY, *Cl'k.*

STATE OF ARKANSAS,
County of White, ss.

I, Samuel Morgan, clerk of the circuit court and ex officio recorder in and for the county of White aforesaid, do certify that the annexed and foregoing deed of conveyance was filed for record in my office, the 1st day of July, 1851, and the same is duly recorded in record-book "F," pages 23 and 24.

In testimony whereof, I hereto set my hand and affix the seal of said circuit court, at office in Searcy, the 8th day of July, 1851.

[L. S.]

S. MORGAN, *Clerk.*
By R. S. BELL, *D. C.*

The plaintiff then read in evidence, against the objection of the defendants, a deed of Leroy McVey and Martin McVey, and coupled therewith as proof of its execution the deposition of the said Leroy and Martin, taken and filed and published in this cause by the defendants, which depositions are ordered to be copied herein as a part of this bill of exceptions, as they remain of record and on file, marked Exhibit "C," and authenticated by the court, and a true copy of which deed and endorsement, purporting to be a certificate of acknowledgment before a justice of the peace, is as follows, to wit:

STATE OF MISSISSIPPI,
De Soto County.

We, Leroy McVey and Martin McVey, heirs-at-law of Allen McVey, deceased, who was a soldier in the late war with Great Britain, have this day bargained, sold, aliened and confirmed, and by these presents do grant, bargain and sell unto James Walker and David Maxwell, of the county of White and State of Arkansas, for the consideration of twenty dollars lawful money to them in hand paid by the said Walker and Maxwell, the following described tract of land (viz:) the northeast quarter of section ten in township seven north, of range seven west, together with all and singular our interest and claim in and to said tract of land, and we do covenant with said Walker and Maxwell that we the said grantors are lawfully seized of the estate in said land, and that they have a good to sell the same, and that they will warrant and defend the title of said land to said Walker and Maxwell against the claim or claims of all persons claiming by, through or under us, but no further.

In testimony whereof we have hereunto set our hands and seals this seventh day of May, 1851.

L. McVEY. [SEAL.]
MARTIN McVEY. [SEAL.]

Attest: W. E. BAWM,
E. A. C. BAWM.

STATE OF MISSISSIPPI,
De Soto County.

Be it remembered, that on this 7th day of May, 1851, personally came before me the undersigned, acting justice of the peace in and for said county, Leroy McVey and Martin McVey, to me well known, who acknowledged signing, sealing and delivery of the within and foregoing deed to be their voluntary acts for purposes and uses therein specified.

In testimony of which, I have set my hand and seal, as such justice, the day and year above written.

W. P. BROWN, *J. P.* [SEAL.]

The plaintiff then proved the death of James Walker, one of the original plaintiffs in this suit, before it was suggested on the record in this case, and that his wife Mary Walker also died soon after he had died, and also that John M. Walker, the substituted plaintiff, had died since the last term of this court.

Plaintiffs then read in evidence the record copy of the last will and testament of *of* the said James Walker, deceased, without objection, except as to the probate thereof, which defendants insisted was insufficient; but the record copy and probate were read in evidence, and are as follows, to wit:

Know all men by these presents, that I, James Walker, of the county of White and State of Arkansas, being in ill health, but of sound and disposing mind and memory, do make and publish this my last will and testament, hereby revoking all wills by me at any time heretofore made.

First. I hereby appoint Mary Walker and Alexander S. Walker my executrix and executor of this my last will, directing my executrix and executor to pay all just debts and funeral expenses, and the legacies hereinafter given, out of my estate.

Second. I give and bequeath to my granddaughter Emila Safronia Walker, minor heir of my son Crawford Walker, deceased, certain negro slaves for life, which slaves are severally named and described in a certain deed of gift made by me, and bearing date 13th day of July, A. D. 1849, and which deed of gift is now duly recorded in the recorder's office of said county of White, in record-book D, pages 96, 97, 98, 99. To my said executrix and executor I give full power and authority to sell and convey three certain tracts of land, now owned by me, to wit: the one lying on the Arkansas river, in the county of Pulaski and State aforesaid, containing 456 $\frac{10}{100}$ acres or thereabouts, one lying in the said county of White and State aforesaid, lying about three miles south or southwest from the town of Searcy, containing two hundred and forty acres, commonly known as the Branch or Spring land; the other is the one-half the interest in the undivided north half of section twelve, in township seven north, of range seven west of the fifth principal meridian; and in the event of the death of my wife the said Mary Walker, who is the said executrix herein named, previous to effecting the sale of the said tracts of land above named, I give my executor, the said Alexander S. Walker, full power and authority to sell and convey the same; and after the same is so sold, the proceeds thereof to be equally divided between my wife and Alexander S. Walker and John M. Walker; or in the event of the death of my said wife previous to said sale being effected, then the proceeds to be equally divided between Alexander S. Walker and John M. Walker, each to share and share alike.

4th. The remainder of my estate, both real, personal and mixed, I give and bequeath to my wife Mary Walker during her natural

life; nevertheless, the slaves which I have placed in the care of and under the control of Alexander S. Walker and Mary his wife, which are described as follows, (viz:) Rachel, aged about fifty years; Dick, a man, aged 30 years; Ann his wife, aged twenty-two years; Louis, a boy, aged about three years; Jacob, aged about one year; Frank, aged about seventeen years; Charles, aged about sixteen years; Robert, aged about twenty-four years; Henry, aged about twelve years; Rachel, aged about ten years—shall be and remain in the possession of the said Alexander S. Walker and Mary his wife, and that they have all the benefit arising from the labor of said slaves until there shall be a general division of my said estate which is hereafter mentioned, at which time they shall revert back and be and constitute a part and parcel of my said estate.

5th. That the balance of my slaves shall remain upon the plantation upon which I now reside during the lifetime of my wife Mary Walker; or in the event of her death, then to remain upon said plantation until my son John M. Walker shall arrive at the age of twenty-one years; at which period they, with the balance of my entire estate, to descend in equal shares to the said John M. Walker, and to my daughter Mary Walker and her bodily heirs; and in the event of the death of the said John M. Walker without bodily heirs, his entire interest in my said estate to descend to said Mary Walker and her bodily heirs.

6th. And at the death of the said Mary Walker, her entire interest in said slaves to descend in equal shares to her bodily heirs, with an equal share or child's part to her said husband, Alexander S. Walker, provided he survives her, during his natural life; and at the death of the said Alexander S. Walker, the said slaves to descend in equal shares to the bodily heirs of the said Alexander S. Walker and Mary Walker his wife.

In testimony whereof, I hereunto set my hand and seal, and publish and declare this to be my last will and testament in the presence of the witnesses named below, this the 14th day of January, in the year one thousand eight hundred and fifty-two.

JAMES WALKER. [SEAL.]

Signed, sealed, published and declared by the said James Walker as and for his last will and testament, in his presence and in the presence of us, who in his presence and in the presence of each other, and at his request, have subscribed our names as witnesses thereto.

JACOB G. ROBBINS,
LANEY HERROD,
JOHN F. BLACK.

STATE OF ARKANSAS,
County of White.

I, John F. Black, one of the subscribing witnesses to the annexed

and foregoing instrument of writing purporting to be the last will and testament of James Walker, late of White county, in the State of Arkansas, now deceased, being duly sworn, do depose and say that the said James Walker subscribed his name thereto in my presence and declared the same to be his last will and testament, and that at the request of him the said testator I subscribed the same as a witness thereto in his presence, and in the presence of the other subscribing witnesses to the same. So help me God.

JOHN F. BLACK.

Sworn to and subscribed before me this 6th day of March, 1852.

SAMUEL MORGAN, *Clerk.*
By R. S. BELL, *D. C.*

STATE OF ARKANSAS,
County of White, ss.

I, Jacob G. Robbins, one of the subscribing witnesses to the annexed and foregoing instrument of writing purporting to be the last will and testament of James Walker, late of White county, in the State of Arkansas, now deceased, being duly sworn, do depose and say that the said James Walker subscribed his name thereto in my presence and declared the same to be his last will and testament, and that at the request of him the said testator I subscribed the same as a witness thereto in his presence, and in the presence of the other subscribing witnesses to the same. So help me God.

JACOB G. ROBBINS.

Sworn to and subscribed before me this 12th day of March, 1852.

SAMUEL MORGAN, *Clerk.*
By R. S. BELL, *D. C.*

The foregoing is a true copy of the original instrument purporting to be the last will and testament of James Walker, deceased, together with the probate of the same filed for record in my office, and recorded this the 12th day of March, A. D. 1852.

SAMUEL MORGAN, *Clerk.*
By R. S. BELL, *D. C.*

Plaintiff also proved that a town had been laid off on the quarter section of land in controversy, and mentioned in said declaration, called the town of "Searcy," which is now the county seat of said county of White; and that a plat and plan of said town has been filed for record in the recorder's office of said county of White, which plat and plan of said town was presented, given and read to the jury as evidence, and a duly authenticated copy of which plat and plan is ordered to be appended hereto, or inserted herein, at this place, and made a part of this bill of exceptions.

It was also proved that a donation had been made by the plaintiff James Walker, and confirmed by the defendant Israel M.

Moore, before the commencement of this suit; had made a donation to said county of White of ten acres of said land, including the "Public Square," represented on said plat and plan; and that at the time of the commencement of this suit said donation of ten acres was in the actual possession of the said county of White, or of other persons not defendants, except as is hereinafter stated; and it was also proved that, previous to the commencement of this suit, said Israel M. Moore claimed to be the owner, and was exercising ownership over the entire quarter section of land mentioned in said declaration, except such parts thereof as he had donated to the county as aforesaid, or sold as hereinafter stated.

And it was agreed between the parties as evidence, and as proved in this case, that at the time of the commencement of this suit, the following persons were severally in the possession actually of the following described parcels of said tract of land, separately, as designated by blocks, lots and numbers, on the said plat or plan of the said town of Searcy, to wit:

The said defendant Israel M. Moore of a dwelling-house on and lots numbered one and two in block twenty-one, and a storehouse on and lot No. 1 in block fifteen, and the tavern-house and appurtenances on and lots No. 3, 4, 5, 6, 7, 8, 9 and 10 in block nineteen, and of lots numbered one and three in block eighteen, by his tenants.

The defendant Madison M. Morris of a blacksmith shop on and lot four in block numbered fifteen. The defendant Henry Morris of a house on and lot three in block fifteen.

The defendant John F. Black of a dwelling-house on and lot numbered eleven in block numbered fifteen.

The defendant James P. Kellem of a dwelling-house on and lot numbered nine in block numbered fifteen.

The defendant William M. Craig of a dwelling-house on and lots numbered nine and ten in block eight, and of a grocery on and lot five in block fourteen. All within said ten-acre donation to said county of White.

And that the following parcels of said tract of land, as so laid off into town lots, were, at the commencement of this suit, in the actual possession of other persons, to wit: of the original plaintiff, James Walker, lots numbered seven, 8, 9, 10 and 11, adjoining and south of Spring square.

Of John B. Humphries and James Nevill, a grocery on and lot numbered 23 in said ten-acre donation.

Of Edmund Garrett a dwelling-house on and lots 28 and 29 on the said ten-acre donation, under a previous purchase from the said county of White.

Of George M. Harder a dwelling-house on and lots 8 in block B, under a purchase from said Israel M. Moore.

Of John Humphries, senior, dwelling-house on and lots 2 and 3 in block seventeen, under purchase from said Moore.

Of John W. Bond, dwelling-house and enclosures on and lots 1, 2, 11 and 12 in block eleven; and of Mrs. Webb, lot 10 in same block; both under purchase or as tenants of said plaintiff Walker.

Of N. F. Steele a dwelling-house on and lots Nos. 1, 2, 3, 10, and 11 in block 9, under a purchase from said Moore.

Of Robert S. Bell, lots 19 and 20 within said ten-acre donation; and of Thomas J. Rogers, storehouse on *an* and lot No. 25 within said ten-acre donation.

And it was further admitted as proved that the blocks in said town (except those in said ten-acre donation) are three hundred feet square each, with an alley twenty feet wide running through the middle, and the lots each 140 feet by 50 feet, and that within the ten-acre donation the lots in possession of any person above named are each 112 feet by 56 feet.

And plaintiffs waive their claim or right to recover damages or rents in this suit, in the present trial.

The defendants then read in evidence the original patent from the United States to Allen McVey, bearing date May 24, 1842, for said tract of land, corresponding in every respect with the said exemplification.

Defendants then offered as evidence to the court, as the foundation for the introduction of secondary evidence to prove the existence and loss of an alleged title-bond from the said Allen McVey to William Pelham for the sale of his floating right to locate his said bounty land, referred to in said patent, which bond was alleged to have been executed in the year 1834, to wit: an affidavit of the said Israel M. Moore, which is filed in said case, marked "Exhibit D," and authenticated by the signature of the judge, and is ordered to be transcribed herein literally as a part of this bill of exceptions, by the clerk; a copy of letters of administration granted to Eli Golden on the estate of said Allen McVey, duly certified, which copy of letters is hereto annexed marked "Exhibit E," authenticated by the court, and ordered to form a part of this bill of exceptions; a deposition of Eli Golden aforesaid, on file in this cause, marked "Exhibit F," and authenticated by the court, which is ordered to be copied by the clerk and incorporated in this bill of exceptions as a part of the same; a deed executed by the said Eli Golden as such administrator, of Independence county, bearing date the 25th day of January, 1843, conveying or purporting to convey said tract of land to the said William Pelham, a true copy of which, with the official certificates of acknowledgment, probate and registry, is as follows, to wit:

This indenture, made and executed this the twenty-fifth day of January, (1843) one thousand eight hundred and forty-three, between Eli Golden, administrator of the estate of Allen McVey, deceased—the former of the county of Independence and the State of Arkansas, the latter of the same county and State at the time of

his demise—of the one part, and William Pelham, of Pulaski county and State of Arkansas, of the second part, witnesseth: that whereas the said Allen McVey is entitled to one hundred and sixty acres, or one quarter section of land, in lieu of the tract heretofore drawn by him for services as a soldier in the late war with Great Britain; and whereas the President of the United States has granted unto the said Allen McVey for his services as aforesaid the following described tract or parcel of land, to wit, the northeast quarter of section ten of township seven north, in range seven west, containing one hundred and sixty acres, in the tract appropriated for military bounties in Arkansas, by patent bearing date the 24th day of May, one thousand eight hundred and forty-two: Now know ye, that for and in consideration of the sum of one hundred and thirty dollars lawful money of the United States paid to the said Allen McVey, the receipt of which is hereby acknowledged, I do, by power granted to me by an act of the legislature of the State of Arkansas approved the 26th day of December, one thousand eight hundred and forty-two, entitled An act authorizing the administrator of Allen McVey, deceased, to convey certain lands, for the consideration of one hundred and thirty dollars as aforesaid paid to the said Allen McVey during his lifetime, grant, bargain and sell unto the said William Pelham, his heirs and assigns, all the right, title and interest, property and claim of the said Allen McVey, deceased, in and to the land before described, to have and to hold the same unto him the said William Pelham, his heirs and assigns forever; and I do hereby covenant to and with the said William Pelham, his heirs and assigns, as administrator as aforesaid of Allen McVey, deceased, to defend the title to said lands to him the said William Pelham from all and every one claiming under the said Allen McVey aforesaid.

Know all men by these presents, that I have, in the capacity aforesaid, sold all the right, title, claim and interest of the said Allen McVey, and do by these presents grant, bargain and sell unto the said William Pelham, and to his heirs and assigns forever, into the tract of land aforesaid, and all the appurtenances thereunto belonging, to have and to hold unto him the said William Pelham and to his heirs and assigns forever.

In testimony whereof, I have hereunto set my hand and seal in the capacity of administrator of Allen McVey, deceased, as aforesaid, on the day and date first above written.

ELI GOLDEN, [SEAL.]
Administrator of the estate of Allen McVey, deceased.

Signed, sealed and delivered in the presence of—
J. E. PELHAM,
PETER LINEBARGER.

STATE OF ARKANSAS,
County of Independence.

Be it remembered, that on this 25th day of January, 1843,

personally appeard before me, John Kyler, an acting justice of the peace in and for the county aforesaid, Eli Golden, administrator of all and singular the goods and chattels, rights and credits of Allen McVey, deceased, personally known to me to be the grantor of the within and foregoing deed of conveyance, who stated and acknowledged that he, as administrator as aforesaid, had executed the same for the consideration and purposes therein mentioned and set forth.

Given under my hand and seal this 25th day of January, A. D. 1843.

JOHN KYLER, *J. P.*

STATE OF ARKANSAS,
County of White.

I, John W. Bond, clerk of the circuit court in and for the county aforesaid, do hereby certify that J. E. Pelham, subscribing witness to the within and foregoing deed of conveyance, after being first sworn by me, stated that Eli Golden, administrator of all and singular the goods, chattels, rights and credits of Allen McVey, deceased, acknowledged that he had subscribed and executed, in his capacity aforesaid, the within and foregoing deed of conveyance for the uses and purposes therein mentioned, and that he had subscribed the same as a witness at the request of Eli Golden, the above mentioned grantor.

In testimony whereof, I have hereunto set my hand as clerk of said court, and affixed official seal thereof, at office in Searcy, this 26th day of January, 1843. [L. S.]

J. W. BOND, *Clerk.*

STATE OF ARKANSAS,
County of White.

I, John W. Bond, clerk of the circuit court, and ex officio recorder for the county of White aforesaid, do hereby certify that the annexed and foregoing deed of conveyance was filed in my office for record on the 26th day of January, A. D. 1843, and that the same is now duly recorded in record-book (B,) pages 63, 64, 65 & 66.

In testimony whereof, I have hereunto set my hand as clerk of said court, and affixed the official seal thereof at office, in the town of Searcy, this 26th day of January, A. D. 1843. [L. S.]

J. W. BOND, *Clerk.*

Also an act of the legislature of Arkansas, of which follows a true copy, to wit:

AN ACT authorizing the administrator of Allen McVey, deceased, to convey certain lands.

Whereas Allen McVey, now deceased, was entitled to re-locate one quarter section of land, in lieu of the bounty land previously

patented to him as a soldier of the late war, and by his obligation dated the 6th day of January, 1834, covenanted, for a valuable consideration paid to him, to convey in fee simple, to William Pelham, the lands which might be so re-located, as soon as a patent therefor should issue; and whereas said patent hath issued, and said Allen McVey hath, since the making of said covenant, departed this life; therefore,

Be it enacted by the general assembly of the State of Arkansas, That the administrator of said Allen McVey, deceased, shall be, and he is hereby, authorized and empowered to make, sign, seal, execute and deliver unto said William Pelham, his heirs and assigns, a good and sufficient deed in fee simple for the quarter section of land so re-located and patented, describing therein said lands agreeably to the patent, and the consideration paid to McVey in his lifetime.

Sec. 2. And be it further enacted, That said conveyance by said administrator shall have the same force and effect as if made by the said Allen McVey in his lifetime.

W. S. OLDHAM,
Speaker of the House of Representatives.
SAMUEL ADAMS,
President of the Senate.

Approved the 26th Dec., 1842.

A. YELL.

Also the deposition on file of John Kyler, Peter Leneburg, and Charles H. Pelham, which depositions are endorsed and marked "Exhibit G," and authenticated by the signature of the judge, and are ordered by the court to be copied into this bill of exceptions by the clerk, and to form a part hereof, except the notice, agreement of counsel, and certificates, which need not be copied, as their sufficiency is not objected to; also the following evidence received as sworn to by James M. Curran, esquire, J. W. McConaughey, and William R. Miller, esquires, witnesses on the part of said defendants, to wit:

James M. Curran testifies that he has been counsel for def'ts ever since suit has been pending, and that he has made diligent inquiry of Golden and in the office of the Secretary of State for the bond said to have been executed by McVey to Pelham for the military float, without being able to find it; that shortly after this suit was commenced, in passing through Clark county, he called upon or met with said Eli Golden, and made inquiry in regard to said bond; but said Golden stated substantially what is stated in his deposition in this cause. Witness requested him, Golden, to make search for the paper, and to endeavor to refresh his recollection in regard to the matter. A few months after, witness again met Golden, and was informed by him that he was confident the bond

was not in his possession, and that he did not know and could not recollect what had become of it.

J. W. McConaughey testified that a short time after the commencement of this suit, Israel M. Moore, one of the defendants, employed him to go to Clark county, in this State, and see Eli Golden, who had been adm. of Allen McVey, and see if I could get the bond executed by McVey to William Pelham, referred to in the act of the legislature authorizing said adm'r to make deed to Wm. Pelham. I, as the agent of Moore, went to Clark county and inquired of Eli Golden for said bond, and requested him, if he had it, to let me have it to take to Mr. Moore. Golden informed that he had not the bond, and that he did not know what had become of it. I requested Golden to make search for it, and reflect and see if he could not find it; and if he could find it, or recollect what had been done with it, to let Mr. Moore know. At that time Golden said that he did not know where the bond was, and that he did not have it; so I did not get it.

Statement of William R. Miller.

I am now and have been clerk of the county of Independence, Arkansas, for 5 or 6 years past, and as such clerk have the custody and control of all the books and papers pertaining to that office, and a pretty general knowledge of the papers on file in s'd office. At the request of Judge Watkins, one of the attorneys for Mr. J. M. Moore at that time, some 3 or 4 years ago, I made a thorough and diligent search among the papers in my office belonging to the administration of the estate of Allen McVey, dec., for a paper writing or bond for title from Allen McVey to William Pelham, which was supposed to be on file in said office, and was unable to find any such paper. About 12 months ago I made another thorough examination of my office at the request of Wm. Byers, esq., another att'y of Mr. Moore, for said paper, which resulted, as did the first, in a failure to find any such paper. From the searches made by me, and my general knowledge of the papers in said clerk's office, I do not believe that any paper of the kind is now or has been in s'd office for the last 3 or 4 years, if it ever was.

Also the deposition of James E. Pelham on file in said case, which is marked Exhibit "H," and authenticated by the signature of the judge, and is ordered to be copied herein by the clerk, and to constitute a part of this bill of exceptions. Also the depositions of Elias N. Conway and William E. Woodruff on file in this case, which are marked "Exhibit I," authenticated by the signature of the judge, and are ordered to be copied into this bill of exceptions by the clerk, and to constitute a part hereof: to the admission of all or any of which, for the purpose of showing the existence or loss of such an obligation, the plaintiffs objected, as wholly insufficient, on the grounds that the same wholly failed to establish the

existence or loss of such bond, or that any such search as is required by law had been made for such bond; and that such bond, if any such ever existed, was void in law, under the acts of Congress regulating such bounty lands and floats, and that said act of the legislature was unconstitutional and void, and that said deed from Golden to Pelham was null and void, and that the whole taken together were incompetent and insufficient, in the aggregate or in detail, to lay a foundation for the introduction of secondary evidence before the jury to prove the existence and contents of such lost bond as alleged; but the court overruled such *objected*, and decided that such evidence so offered was sufficient to authorize the introduction of such secondary evidence; to which judgment and decision of the court the said plaintiffs excepted at the time, and now, on leave of the court, tender this their bill of exceptions thereto.

Under which decision of the court the said defendants offered to read in evidence to the jury the said authenticated copy of letters of administration granted to the said Eli Golden on the estate of said Allen McVey, to which the plaintiffs objected, on the ground that they were wholly irrelevant to the question in issue, tended to prove nothing material, and were calculated to mislead the jury; but the court overruled the objection and permitted said letters of administration to be read to the jury as evidence; and to which decision of the court the said plaintiffs excepted at the time, and now by leave of the court tender this their bill of exceptions thereto. The defendants then offered to read as evidence to the jury the said deposition of the said Eli Golden, which the plaintiffs objected to on the ground that the contents thereof where wholly irrelevant to the issue, incompetent as evidence, and tending to mislead the jury, and on the ground that his said deed already read to the court as evidence, and mentioned in said deposition, contained a warranty of title to the said tract of land, and therefore disqualified him for testifying in support of said title; but said objection was overruled by the court, and said deposition was thereupon read in evidence; to which decision of the court overruling said objection, and admitting said deposition as evidence, said plaintiffs excepted at the time, and now, on leave of the court, tender this their bill of exceptions thereto.

The defendants then offered in evidence to the jury the said depositions of John Kyler, Peter Lineburg, Charles H. Pelham and James E. Pelham, to each of which depositions, and each and every sentence contained in each of them, the said plaintiffs objected, on the ground of irrelevancy and incompetency, and as not even tending to maintain the issue on the part of the said defendants, or conducing to prove the execution of said alleged lost bond; but the court overruled said objection, and permitted each and every one of said depositions, and each and every part thereof, to be read in evidence to the jury, and the same was so read; to which decision of

the court in admitting said depositions and each of them, and every part thereof, to be read in evidence to the jury, and in overruling the said plaintiffs' said objection, they excepted at the time, and now, on leave of the court, tender this their bill of exceptions thereto.

The defendants then offered in evidence to the jury the deed of the said Golden, as such administrator, to the said William Pelham, to the reading of which to the jury as evidence the said plaintiff objected, on the grounds that he had no lawful authority to execute the same, and that it was wholly inoperative as between the parties to this suit, or as to the heirs of the said Allen McVey, and incompetent as evidence; but the court overruled the objection, and permitted said deed to be read in evidence; to which decision of the court in admitting said deed as evidence to the jury, the said plaintiff excepted at the time, and now tender this their bill of exceptions thereto.

Whereupon the said plaintiffs moved the court to exclude from the jury as evidence the said deposition of said Golden, previously read to them as evidence, upon the ground that said deed contained a clause of warranty personally binding on Golden, and disqualifying him to testify, and that the court should instruct the jury totally to disregard said deposition of Golden as evidence; but the court refused to exclude the said deposition from the jury, or to tell them that they ought not to regard it as evidence, and overruled the motion of said plaintiffs thereto; to which decision of the court the said plaintiffs excepted at the time, and now, on leave of the court, tender this their bill of exceptions thereto.

The defendants then offered in evidence to the jury the said act of the general assembly, above copied herein, with the title and preamble, to the reading of which the said plaintiffs objected, on the ground that the act itself was unconstitutional, null and void, and did not in anywise tend to establish or rebut any material fact in issue in this case, but would mislead the jury; but the court overruled the objection, and permitted the said act of the general assembly to be read in evidence, and the same was read; the court, however, declaring to the jury at the same time that they were not to consider the said preamble to said act as evidence of the truth of the matters therein recited as facts; and to which decision of the court in allowing said act to be read in evidence the said plaintiffs excepted at the time, and now, on leave of the court, tender this their bill of exceptions thereto.

The defendants then offered to read in evidence to the jury the depositions of said Woodruff and Conway, to which plaintiffs objected, and the objection was sustained as to the entire deposition of the said woodruff, and his deposition was wholly suppressed, and all of said Conway's said deposition was suppressed except the following clause, to wit: "I recollect of having seen and examined the bond for title from Allen McVey (I think that was his name)

to William Pelham for title to the land that might be selected and patented, under his bounty float. The same claim was located on the northeast quarter of section ten, township seven north, range seven west. I think the land referred to was before the legislature at the time the act was passed authorizing McVey's administrator to convey said land to William Pelham. I do not know what ever became of said bond. I do not recollect the details of the bond referred to from McVey to Pelham, but I well recollect that the terms or consideration of it was substantially this: that upon payment of the consideration named in the bond, and upon or after the issuance of the patent for the land that might be located with the float, McVey obligated himself to convey such land to William Pelham. I do not anything further material, except that a good many circumstances had impressed the foregoing facts upon my memory. Elias N. Conway." Which clause the court permitted to be read in evidence, and they were so read; and to which decision of the court in allowing the same and each sentence thereof the plaintiffs excepted at the time, and now, on leave of the court, tender this their bill of exceptions thereto.

The defendants then read in evidence, under the decision of the court against the objection of the said plaintiffs, a paper duly certified by and under the signature of Wm. W. Adams, register of the land office at Little Rock, which paper is hereto annexed, as a part of this bill of exceptions, marked "Exhibit K," and endorsed as such by the judge of this court. To the decision of the court in permitting the same to be read in evidence the said plaintiffs excepted at the time, and now, on leave of the court, tender this their bill of exceptions thereto.

Defendants then, under the judgment and decision of the court, and against the objections of the plaintiffs that such deed was wholly irrelevant, as no title to the land in controversy had been shown to be vested in William Pelham, read in evidence a deed of conveyance from the said William Pelham, bearing date on the first day of June, 1847, conveying to the said Israel M. Moore the tract of land mentioned in the said declaration, in which deed the wife of the said William Pelham had joined him in the execution thereof, and the same was acknowledged by both, and filed for record in said county of White, on the 10th day of June, 1847, and recorded; to which decision of the court permitting said deed to be read in evidence the plaintiffs objected at the time, and now, on leave of the court, file this their bill of exceptions thereto.

Defendants then offered to prove the value of the tracts of land in controversy, at the time of the commencement of this suit, to which the plaintiffs objected as wholly irrelevant; but the court overruled the objection, and permitted said defendants to prove such value; and whereupon said defendants proved by one witness that a flourishing town was then on the land, and a sulphur spring,

and that it was then, to wit, in May, 1851, without the improvements, worth $50 per acre; and with the improvements, even calculating the trouble, expense and delay of obtaining possession by litigation, the purchase of a good title from owners out of possession would have been worth from five to six thousand dollars; and another witness testified that in his judgment the entire quarter section of land in controversy, with the improvements in May, 1851, considering the spring and everything, was worth from fifteen to twenty thousand dollars; and even considering the litigation, trouble, expense and delay of obtaining possession thereof under a good adverse title, it would then have been worth ten or twelve thousand dollars. To which decision and judgment of the court in admitting such evidence as to value, the plaintiffs excepted at the time, and now, on leave of court, tender this their bill of exceptions thereto.

One of said defendants' witnesses also testified that the said James Walker, when he died, left no surviving children or descendants, but those mentioned in his said will, and that Emily Sophronia, the granddaughter of the said James Walker, deceased, and mentioned in his said will, is still alive.

And no other evidence was offered or given on the trial of said cause.

And before the jury retired from the bar to consult of their verdict, and before the cause was argued by counsel, the plaintiffs moved seventeen consecutive instructions, in the order they are first numbered below; the first, second, fourth, fifteenth and sixteenth of which instructions so moved by the plaintiffs the court overruled and refused to give the same and each of them to the jury, but gave the remaining twelve of the said instructions so moved, and gave to the jury one instruction of its own in lieu of them, which follows immediately after the said seventeenth instruction so moved; to which judgment and decision of the court refusing to give said first, second, fourth, fifteenth and seventeenth instruction, and each of them, said plaintiffs excepted at the time, and now tender this their bill of exceptions thereto.

The following are said seventeen exceptions so moved by said plaintiffs, to wit:

First Instruction. [Refused.]

The opinions or conclusions of a witness given are not to be considered by the jury as evidence; but he must state the facts and circumstances upon which he founds his opinions or draws his conclusions, and from such facts and circumstances the jury must draw their own conclusions and opinions; disregarding such opinions and conclusions of the witness.

Second Instruction. [Refused.]

2. That the statement of a witness, in calling a lost paper in

controversy a bond, or a deed, does not make it such; nor is it evidence that such paper was a bond or deed, if he state none of the facts or circumstances essential to constituting it a bond or deed.

Third Instruction. [Given.]

3. The statement of a witness that such lost paper was the bond or deed of any particular person does not make it such, unless it also be proved that such person actually executed it as his bond or deed.

Fourth Instruction. [Refused.]

4. That in order to constitute a paper the bond of a party to be charged therewith, it must appear that it was signed, sealed and delivered by him as such; and when such paper is alleged to have been lost or destroyed, and was never acknowledged, or proved and recorded, and there was no subscribing witness thereto, its execution must be proved by evidence that the party signed, sealed and delivered it, as his bond, which can only be done by one or more witnesses who saw him sign, seal and deliver it as such; or by proof that he afterwards acknowledged it to be his bond, or by proof of his signature and seal thereto, by one or more persons shown to be acquainted with his handwriting.

Fifth Instruction. [Given.]

5. That if the jury believe from the evidence that the plaintiffs have made out a title to the possession of the land in controversy, from the heirs of Allen McVey, the plaintiffs are entitled to recover against the defendants in possession, unless the defendants have by evidence shown a better title to the possession in themselves, or better understanding and subsisting legal title in a third person; and to make out either, according to the evidence given, proof of the execution and of the contents of such alleged lost bond is in law necessary.

Sixth Instruction. [Given.]

6. The statement of a witness called upon to prove the contents of a lost writing, detailing his recollection of the purport and effect of the instrument, or the construction which he, the witness, put upon the words of the instrument, is not of itself competent evidence to establish such contents.

Seventh Instruction moved. [Given.]

7. When a party is allowed to establish the contents of a lost bond, as in this case, by parol evidence, he must show by such evidence, with reasonable certainty, what its terms and provisions were, by a witness who has seen and read the instrument, or heard it read, or is otherwise enabled to speak and does speak with some

degree of accuracy as to its contents, and identify it as the one executed by the party who is attempted to be charged with it.

Eighth Instruction. [Given.]

8. And no vague, uncertain recollection concerning its contents or its stipulations is sufficient to supply the place of the writing itself; but its substance must be satisfactorily proved by stating the language used in it, or the substance of the language so used.

Ninth Instruction. [Given.]

9. That in weighing the evidence of the different witnesses in this case, one most important legal test of its truth is, that their statements be consistent with each other, and with all the established circumstances of the case, in particulars which serve to render their evidence the more consistent and complete.

Tenth Instruction. [Given.]

10. And that where witnesses in making their statements in evidence are sparing in, or destitute of circumstances, or circumstantial detail, such want of detail renders their evidence suspicious, or tends to render it suspicious.

Eleventh Instruction. [Given.]

11. That in law, the deposition of a witness, where he was not subjected to cross-examination, is to be considered inferior and weaker in force and effect than the evidence of a witness subjected to a cross-examination in open court.

Twelfth Instruction. [Given.]

12. And if the jury believe, in this case, that any witness has testified falsely in any one particular, they would be right in disregarding his whole evidence.

Thirteenth Instruction. [Given.]

13. That where a witness testifies reluctantly in favor of the party introducing his evidence, and freely against him, the jury may believe that which makes in favor of the party offering the evidence, disbelieve that which makes against such party, if they believe the circumstances will justify it.

Fourteenth Instruction. [Given.]

14. That proof of a mere admission by the administrator of Allen McVey, that the paper in controversy alleged to be lost was his bond, is not evidence in this suit to establish the existence of the bond against McVey's heirs, or of the plaintiffs to the land in controversy.

Fifteenth Instruction. [Refused.]

15. That by the law existing in the Territory and State of Arkansas, previous and down to the 20th of March, 1839, such a title

bond as is alleged in this case to have been lost or destroyed, even though there were no subscribing witness thereto, might have been proved and put upon record, in order to its preservation as a muniment of title.

Sixteenth Instruction. [Refused.]

16. That the defendants in this case cannot, under the law, be permitted to set up any defect or want of consideration in the purchase from McVey's heirs by Walker and Maxwell, outside of the deeds of conveyance.

Seventeenth Instruction. [Given.]

17. If the jury should find that the plaintiffs are entitled to recover the land in controversy, and that the defendants or any of them were, at the institution of this suit, in possession of separate parcels of said land, and separately guilty as to such separate parcels, they may find each them separately guilty as to such separate possession, and not guilty as to the residue.

Instructions given by the Court sua sponte.

The jury must believe from the evidence that Allen McVey did sign, seal and deliver the bond claimed to have been executed by McVey to Pelham, before they can base any claim of title of the defendants' claim thereon.

And at the same time the said defendants moved to give, and it gave to the jury the following instruction, to wit:

That if they believe from the evidence that Allen McVey in his lifetime executed and delivered a bond to William Pelham, whereby he agreed or bound himself to make Pelham a title to such land as should be located with his float, upon the payment of the price agreed upon and the issuance of the patent, and that Pelham did pay the consideration, then the deed executed by Golden, as adm'r of McVey, under the act of the legislature of the State of Arkansas read in evidence, vested the title and right to the possession of the lands in controversy in Wm. Pelham; and if said defendant, Moore, holds by conveyance from said Pelham, the jury are bound by law to find for the def'ts.

To the judgment and decision of the court in so giving the said foregoing instruction so moved by the defendants to the jury, the said plaintiffs excepted at the time, and now present this their bill of exceptions thereto.

And time having been given by the court to the said plaintiffs to prepare their bill of exceptions to the several judgments and decisions of the court so above excepted to, and to reduce the same to form, the said plaintiffs now, on this 29th day of June, 1854, in the same term, come and tender this their bill of exceptions to the several decisions and judgments of the court here so above excepted

to, and pray that this their bill of exceptions may be signed, sealed and made a part of the record in this cause, which is accordingly done.

BEAUFORT H. NEELY, *Judge.* [SEAL.]

The following are the exhibits mentioned and referred to in the above and foregoing bill of exceptions, from Exhibit "A" to inclusive, to wit:

Exhibit A.

This is Exhibit "A," a part of the plaintiffs' bill of exceptions. June 29, 1854.

BEAUFORT H. NEELY, *Judge.*

Deposition of Wm. Cook.

The deposition of William Cook, taken on the 31st day of May, A. D. 1852, who deposeth as follows, to wit:

I was acquainted with Allen McVey; first knew him in Franklin county, Tennessee, on Elk river, about twenty-three or twenty-four years ago. He had a mother, Sally McVey, and Reuben McVey was his oldest brother; King McVey was his next oldest, and Lorenzo McVey and Smith McVey were his brothers, I think; he had one sister; I am not certain what her name was; she was small; they all lived in the same neighborhood, on Elk river; I knew of none of the McVeys dying there; their family came there from South Carolina; their mother was called the widow McVey; I never knew anything about their father; I was acquainted with them three or four years; Reuben married there; he married Winney Easely; I was at the wedding; Allen McVey had been to the army; after he came back they all moved out to the western district of Tennessee; he (Allen McVey) was a regular soldier in the Canada war, in the last war with England; I never knew of any of them dying after they came out to the western district.

[Suppressed by the court.] (John Timms, a relation of the McVeys, told me that Lorenzo McVey had died, and also that Reuben McVey had died in the western district. Lorenzo died without leaving any family, and without having been married.)

The first time I met with Allen McVey again was in 1832, at Montgomery's point, coming into Arkansas; have seen him several times since. He located in Independence county, in Arkansas. He carried on blacksmithing in Batesville, and afterwards I understood from Allen McVey that he went to John Simpson's, in the same county, to live with him, and lived with him, as I understood, till he died. I do not know when he died; I think it has been some seven or eight years ago. I never heard of Allen McVey being married.

[Suppressed by the court.] (I heard that old widow McVey, Allen's mother, died in the western district of Tennessee; she died

after Allen had died. My informant in regard to her death was John Timms.)

X-examination.

Question. Did you ever hear of widow McVey's coming to Arkansas to see after this soldier claim?

Answer. I did not.

Q. Did you ever hear of her marrying again or having any children after she came to Tennessee?

Answer. I did not.

And further this deponent saith not.

WM. COOK.

Exhibit B.

These depositions of Nathan Francis and Samuel Smith are made part of the plaintiffs' bill of exceptions marked "Exhibit B," and ordered to be incorporated therein.

BEAUFORT H. NEELY, *Judge.*

June 29, 1854.

Deposition of S. Smith.

The deposition of Samuel Smith, taken on the 12th day of April, A. D. 1852, who deposeth as follows, to wit:

Qu'n 1st. Will you state whether you sold an interest in a piece of land known as the N. E. $\frac{1}{4}$ of sec. 10, T. 7 N., R. 7 west, in White county, Arkansas, to James Walker and David Maxwell? and state also the consideration received, and the conversation and circumstances under which you made the sale.

Answer. I sold my interest in a tract of land in White county, Arkansas, to James Walker and David Maxwell, some time in May last I think; but as to the section, township, and range of the land, I do not know them; they were given in the deed I made to Walker and Maxwell; the amount of money given me by these men was twenty-five dollars for said land. They first agreed to give me twenty dollars, but my wife refused to sign the deed, and they gave her five dollars more if she would sign it. I met with Mr. Walker, I think it was on Sunday, at my uncle Richard Golden's, who told me that he was just knocking about through the country buying up old soldier claims to locate in Arkansas. When I found he was from Arkansas I inquired of him about a tract of land which I understood was in White county, located by Allen McVey, and I told him that I understood the town of Searcy was built on it. When I first spoke of this land Mr. Walker appeared to know nothing about it, but afterwards he represented to me that the land was some three or four miles from the town of Searcy, and he also said that it was of very little value. I then left him, and was ab-

sent from him for an hour or two. When I came back Mr. Walker took me out to one side, and told me that he would buy my interest in that land; not on account of its value, but stated that he had entered that same land, or a part of it, before this float was laid on it by Pelham for Allen McVey, and that Pelham and him had had a lawsuit about it, and that Pelham had taken it from him, and that Pelham had acted the rascal so badly with him, that he wanted to get this claim from me for the purpose of annoying him. He said he was willing to spend some more money; that he did not like to be beat by him. He asked what I would take for it; I told him I would take ten dollars, as I supposed, from what he told me, it was not worth much at any rate; and he said he would give me ten dollars, and invited me to come to town the next day for the purpose of fixing up the writings.

The next day I came to town and saw Walker, who immediately took me to another man, and introduced him to me as Mr. Maxwell. He then stated to Maxwell that I was one of the heirs of Allen McVey, and that he had been talking to me about buying my interest for ten dollars, and asked Maxwell what he thought of it. Maxwell said he was willing to risk a little more on it; that the land was not worth much, and that it was very uncertain about their gaining of it.

I went off then and left them, and made some inquiry, and found that the land was worth more, and told them that I would not take ten dollars, but that they must give me twenty dollars. When I told them this they wanted to know how I had found out about the land. I told them that I had seen Cole, who had got his information from a man the name of Kelly, (a Mr. Paul P. Kelly, I think they call him,) from whom I had received the information. Walker then represented to me that Kelly was a man of very bad character; that he was a man upon whose representation no dependance could be placed at all. I think he conveyed the idea to me that Kelly was thievish; that he got his living out of the woods; and if I wanted to know more about his character, if I would go to Arkansas I could get it. They then agreed to give the twenty dollars, and drew up the writings and I signed the deed. He requested me to bring my wife into town the next day to sign the deed, which I did as requested. She appeared very obstinate about signing the deed; Mr. Walker then pulled out five dollars, and said he would give her that much more if she would sign it, and went on to represent the land as being valueless, and that it was not worth more than they had given. She then, after a good deal of persuasion, signed the deed, but did it reluctantly, as she did not like to sign a paper conveying land when she did not know its value, as she said she did not know but it was worth a fortune. After the writings were all signed and delivered, I asked Maxwell to tell me truly what the land was worth, and he told me that if he had the best kind of a right to it, the most and outside cent he would give for it would be eight hundred dollars.

Allen McVey had at the time of his death, living, his brothers King McVey, Reuben McVey, Lorenzo Dow McVey, and myself; also one sister, Lucinda Francis. Lorenzo Dow is since dead, without leaving any children. Reuben McVey died, leaving John H. McVey, Leroy P. McVey, Martin McVey, DeWitt McVey, Winfield S. McVey, Paralle McVey, Florida McVey, and Ariadna McVey (now wife of Wm. A. Lackey), his children; these are all the heirs of Allen McVey, deceased, of which I have or ever had any knowledge. I am a half-brother of Allen McVey, deceased. Allen McVey was never *but* married that I know of. And further this deponent saith not.

his
SAMUEL ⋈ SMITH.
mark.

Deposition of Francis.

The deposition of Nathan Francis, taken on the 13th day of April, 1852, who deposeth as follows, to wit:

I sold my interest in a tract of land in White county, Arkansas, for twenty dollars, to James Walker and David Maxwell, and they gave my wife five dollars more for coming into town, making in all twenty-five dollars for the land. The number, section, or range of the land I know nothing about at present, but I suppose the deed described them that I gave Walker and Maxwell. The first I saw of Mr. Walker was at my house; afterwards at Richard Golden's, an uncle of my wife's. After sitting awhile he observed that he understood that we had an interest in some land in Arkansas—this was at my own house; that he would give a small sum for an interest in said land. He further stated that there were some improvements on the land; that he had some improvements himself, and that he was afraid there would be a lawsuit about it, for the land itself was not much account; he supposed it would cost him a thousand or two dollars; he had expended that amount already in a lawsuit for the said land and had lost it, and was willing to spend that amount, for he had it to spare. There was one of old Isaac Golden's sons living on the land, and he further stated that the said Golden sold the same and gave a title to it, but do not recollect who Golden had sold it to; and further, that Allen McVey had made a right to some one, or that he had heard some one say something about selling it; but he doubted whether Allen McVey ever sold the land, for he had wanted some of us to go and settle on the land. I think he told me that he was to meet Samuel Smith the next day or so in town for the purpose of buying his interest in said land, and wanted or told me to come into town at the same time for the same purpose. We met in town, and I saw Smith; he told me that he was to get twenty dollars for his interest in the land, and I observed that that was what I was to get for my

interest. Mr. Walker gave each of our wives five dollars, as there was some difficulty in getting them to town to sign the title for our interest in the land; he seemed to be the principal in the transaction. Mr. Maxwell, I think, took no part in it. The heirs of Allen McVey, as far as I know, is King McVey, Reuben McVey, Lorenzo D. McVey, Samuel Smith, Lucinda McVey, now my wife; these were the brothers and sisters of Allen McVey. Lorenzo and Reuben are both dead, Lorenzo having no family. Reuben has left the following living: John B. McVey, Lorenzo McVey, Martin McVey, De Witt McVey, Winfield Scott McVey, Parolu McVey, Florida McVey, and Ariadna McVey now is the wife of William A. Lackey; these are all that I have any knowledge of as heirs of Allen McVey. The father of Allen left his mother before Lucinda and Samuel Smith were born; and further this deponent saith not.

his
NATHAN ⋈ FRANCIS.
mark.

Exhibit C.

This is "Exhibit C," made a part of the plaintiffs' bill of exceptions, and as such ordered to be copied therein.

BEAUFORT H. NEELY, *Judge.*

June 29, 1854.

Deposition of L. P. McVey and M. McVey.

The deposition of Leroy P. McVey and Martin McVey, taken on the 25th day of August, A. D. 1852, who deposeth as follows, to wit:

Ques. 1st. Did you sell your interest in a tract of land to James Walker and David Maxwell lying in the State of Arkansas, the county of White?

Ans. We did.

Ques. 2d. Do you recollect the numbers and range?

We do not.

Ques. 3d. Were the numbers and range in the deed?

Ans. We think they were.

Ques. 4. Did you give a warranty or quit-claim deed?

Ans. We signed over to them our right and interest.

Question to Martin McVey. Were you of age at the time you signed the deed?

Ans. I was not.

At what time did you sell your interest to them?

Ans. We think it was in May, 1851, but do not recollect.

Quest. 6th. Will you give a statement of the conversation between you and Mr. Walker?

Mr. Walker came into Leroy's boot and shoe shop and told us that he had seen some of our relations in Madison county, Ten., who requested him to call and see us, and tell us to write to them to let them know where they could write to us. Mr. Walker also

said that he was acquainted with our father in Tennessee; he then told us that we had an interest in some land in Arkansas, White county, about forty miles from White river, and that they had bought the interest of our uncles and aunts in Tennessee, and that they wanted to buy ours and our brothers' and sisters' if we were disposed to sell, and that they were willing to give us what they had given the others; they said they gave my uncles and aunts 20 dollars each for their interest, and for their trouble in going to Jackson they had given them five dollars, which made twenty-five dollars each. We think about that time Dr. Morris spoke and asked them what the land was worth; they answered and said it was worth Government price, one dollar and twenty-five cents per acre; they then calculated the number of interests, asking us how many heirs there was, and said our interest would not be worth attending to, but it would be worth something to them, as they *twell are* the land. We then told them that we would sell our interest, as they had told us all about it that we ever had heard, and as we had better get something than nothing, as we never expected to go over to attend to it, as, from their representations, it was not worth attending to. We think they wrote out the deed, and said we could go before some magistrate and fix up the deed. We accordingly went before a magistrate and signed and acknowledged a deed; after we had executed the deed, they paid us each ten dollars for our interest. We knew nothing about the land only from their own representation, and having confidence in the truth of what they told us, as we were thereby induced to sell our interest for that price. They did not tell us what they were going to do with the claims; they did not say they expected to have a lawsuit, but left the impression that, as they were living on the land, they wanted to get all the claims. We did not know that the town of Searcy was on the land, nor that it was near any town; indeed we did not know that we had any land in Arkansas; all we knew about it was from what they told us.

Ques. 7. Will you tell what Walker and *and* Maxwell said the whole had cost them, as near as you can recollect?

We think they said they had paid out about one hundred and ten dollars for what claims they had bought.

L. P. McVEY,
M. V. McVEY.

Exhibit D.—Moore's Affidavit.

This is "Exhibit D," referred to in and made a part of the plaintiffs' bill of exceptions. June 29, 1854.

BEAUFORT H. NEELY, *Judge.*

I, Israel M. Moore, being duly sworn, state on oath that the bond executed by Allen McVey to William Pelham, and referred to in the depositions of Eli Golden, J. E. Pelham, Charles Pelham,

and others, is not in my possession nor within my knowledge or control, and that I verily believe the same is lost or destroyed. This affiant further states that he has made diligent search and inquiry for said bond by inquiring of the said Eli Golden, William Pelham, Charles Pelham, Jesse Veylee, and Peter Lineburger, of searching the office of secretary of State, the records of the probate court of Independence county, and of inquiring of Elias N. Conway and of David B. Grier, secretary of said State, and that he has been unable to find said bond by such search and inquiry.

ISRAEL M. MOORE.

Exhibit E.

This is "Exhibit E," which is made a part of the annexed bill of exceptions. June 29, 1854.

BEAUFORT H. NEELY, *Judge.*

STATE OF ARKANSAS,
County of Independence.

In vacation of the county court of the county of Independence. To all to whom these presents shall come, greeting:

Whereas Allen McVey, as it is alleged, lately died intestate, having while living, and at time of his death, goods and chattels, rights and credits, within this State, by means whereof the granting of administration of all and singular the goods and chattels, rights and credits, and final discharging of the accounts thereof, is necessary: therefore, do I grant unto Eli Golden full power and authority to administer and faithfully dispose of all and singular the goods and chattels, rights and credits of the deceased; to ask, demand, sue for, recover, and receive the debts which the said deceased had owing to him at the time of his death, and pay all his debts so far as his goods and chattels, rights and credits will extend and the law direct, hereby requiring the said Eli Golden to make or cause to be made a true and perfect inventory of all and singular the goods and chattels, rights and credits of the said deceased, which have or shall come to the knowledge of him the said administrator, and the same so made to exhibit into the office of the clerk of the county court for the county of Independence and State of Arkansas, on or before the third day of March next, and also to render just and true accounts of his said administration when thereunto required; and I do by these presents depute, constitute and appoint Eli Golden administrator of all and singular the goods and chattels, rights and credits of the said Allen McVey, deceased.

In testimony whereof, I have hereunto set my hand as clerk and affixed the seal of my office at Batesville, this third day [L. S.] of January, A. D. 1837, and of the independence of the United States the sixty-first year.

WILLIAM MOORE, *Cl'k.*

Filed and recorded in probate court book A, pages 93 and 94, on the third day of January, A. D. 1837.

WILLIAM MOORE, *Cl'k.*

STATE OF ARKANSAS,
County of Independence, sct.

I, William R. Miller, clerk of the circuit court and ex officio clerk of the court of probate in and for the county aforesaid, do hereby certify that the annexed and foregoing is a true copy of the letters of administration granted to Eli Golden upon the estate of Allen McVey, deceased, as the same appears of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court, which is by law the seal of [L. S.] said probate court, at my office, this 30th day of September, 1851.

WM. R. MILLER, *Cl'k.*

Exhibit F.—Golden's Deposition.

This is "Exhibit F," referred to in and ordered to be made a part of the plaintiffs' bill of exceptions. June 28, 1854.

BEAUFORT H. NEELY, *Judge.*

The deposition of Eli Golden, taken on the 13 day of June, A. D. 1853, who deposeth as follows, to wit:

I am a resident of Clark county, Arkansas, and formerly a resident of Independence county. I was well acquainted with Allen McVey before his death. I think he died in Independence county, in the State aforesaid, in the year 1836, and in January, A. D. 1837, I became his administrator, and remained so until a final settlement of his estate. In January, A. D. 1843, I did, as adm'r of said McVey, dec'd, in pursuance of an act of the general assembly of the State of Arkansas, entitled "An act authorizing the adm'r of McVey, dec'd, to convey certain lands," approved Dec. 26, A. D. 1842, execute a deed of conveyance to William Pelham for a tract of land agreed to be conveyed by said McVey, in his lifetime, to said Pelham; that the deed was executed by me at the residence of John Kyler, in the county of Independence, State aforesaid; said Kyler was then an acting justice of the peace for said county; that at the time I executed the deed, James E. Pelham, who acted as the agent of his brother Wm. Pelham, produced the bond executed by McVey to Wm. Pelham in his lifetime, and also said act of the legislature, (I believe the purport of the bond was correctly recited in said act,) and that said bond is not now in my possession, nor do I know what has become of it. At the time I made and acknowledged the deed said Kiler told me to take the bond—that it belonged to me; but if I took it from his office, I am unable to say

what has become of it. I know that it is not in my possession or control. Further this deponent saith not.

ELI GOLDEN.

Exhibit G.—Kyler's Deposition.

This is "Exhibit G," referred to in and made a part of, and ordered to be copied into the plaintiffs' bill of exceptions. June 29, 1854.

BEAUFORT H. NEELY, *Judge.*

The deposition of John Kyler, taken on the 23d day of August, 1852, who deposeth as follows, to wit:

I am a resident of the county of Independence and State of Arkansas, and have been ever since the year 1820. I was well acquainted with Allen McVey for a good many years in this country. After his death Eli Golden was appointed his administrator. I was also acquainted with William Pelham. In the year 1843 I was an acting and duly commissioned justice of the peace within and for the county of Independence. Some time in January, 1843, Eli Golden, the administrator of the estate of Allen McVey, deceased, appeared before me as such justice of the peace and acknowledged a deed made by him, as such administrator, to William Pelham. Said Golden, as such administrator, did acknowledge and execute said deed in my presence, and I, as such justice of the peace, did then certify said acknowledgment in said deed. At the time above referred to James E. Pelham was at my house, and seemed to be attending to the business for William Pelham. James E. Pelham then and there exhibited a bond from Allen McVey to William Pelham, binding the said McVey to convey to said William Pelham a tract of land known as the Searcy springs; the numbers of said land he does not know. I do not recollect of reading the bond, but understood from both Eli Golden and James E. Pelham, that the bond was from McVey to Pelham.

It is my impression that I am a subscribing witness to said deed, and they sent for Peter Lineburger to attest said deed as a witness, and he came and attested said deed as a witness. This all took place at my house in Independence county.

At the same time that James E. Pelham produced the bond above named, he also produced an act of the legislature empowering the administrator of Allen McVey to sell said tract of land, and which act was approved the 26th day of December, 1842. I understood that the deed made by Golden to Pelham was made in pursuance of said act, and founded on said bond, and I know of no other deed of that kind having been made and acknowledged before me by Golden. After the deed was executed, (but at the same time) James E. Pelham offered Golden the bond, which Golden at first refused to take, and I told him to take it; but I

refused to do so, and advised him to take it and file it away with his administration papers, and he took it, and I know nothing more about it. I do not recollect whether James E. Pelham and myself attested the deed as witnesses; but I know we had to send for Peter Lineburger to witness the deed, and Lineburger came and witnessed it. My recollection is, that the act of the legislature above referred to, recites the substance and contents of said bond.

JOHN KYLER.

Deposition of Lineburger.

The deposition of Peter Lineburger, taken on the 23d day of August, 1852, who deposeth as follows, to wit:

I am a resident of the county of Independence, and have been for the last twelve years. I am acquainted with Eli Golden, administrator of the estate of Allen McVey, deceased. I was present at the execution of a deed of conveyance from Eli Golden, as administrator of the estate of Allen McVey, deceased, to William Pelham, at the house of John Kyler, in the county of Independence, some time in the month of January, 1843. I saw Golden execute said deed, and at his request I attested it as a subscribing witness. It is my recollection, that James E. Pelham was also a subscribing witness to said deed. The deed above spoken of is the only one I ever witnessed for Golden. I do not know the numbers of the land set forth in the deed, but understood from the parties *in* was situated near Searcy. Golden acknowledged the deed before John Kyler, esquire, and at the same time James E. Pelham had a bond from Allen McVey to William Pelham, to make William Pelham a deed to the land, and which bond Mr. Golden took after making a deed to Pelham, and I do not know what became of the bond after Golden took it. It was my understanding, that Golden made the deed to Pelham in discharge of the bond that McVey had given to Pelham. I do not recollect that I saw or heard any thing about the "act" of legislature which John Kyler has spoken of in his deposition; but recollect seeing the bond, and that a controversy took place who should take it, and John Kyler persuaded Eli Golden to take it, which he did. I have no knowledge what has since become of the bond. James E. Pelham was there at the time, and seemed to be acting as the agent of William Pelham. Eli Golden and James E. Pelham admitted the bond to be a bond from Allen McVey to William Pelham. It was my understanding, that Eli Golden made the deed to William Pelham in discharge of McVey's bond, as the administrator of McVey's estate. I do not recollect the date nor the contents of said bond, only I understood it was about said land.

PETER LINEBURGER.

Deposition of C. H. Pelham.

The deposition of Charles H. Pelham, taken on the second day of October, 1852, who deposeth as follows, to wit:

I was acquainted with Allen McVey. I was acquainted with him for years before his death. I became acquainted with him in the year 1825 or 1826, in the county of Independence, and then Territory of Arkansas, and was acquainted with him from that time until his death. In 1832 or 1833, he obtained a patent from the United States for his services as a private soldier in the war with Great Britain. McVey employed William Pelham, who was a surveyor at that time, to go with him to look for the land, which I think was situated in the county of White, which the patent covered, and was supposed to be unfit for cultivation, and an application was made by McVey to the General Land Office for a float, which he obtained. The acquaintance of William Pelham with McVey commenced about the time of my acquaintance with him. At the time McVey obtained the float, William Pelham purchased it of McVey, for which he gave between one hundred and fifty and two hundred dollars. At the time the application was made for the float, there was a conditional contract made between William Pelham and McVey, which resulted as above described, and at the time of completing the contract McVey executed his bond to William Pelham to convey to him the land upon which the float might be located, in consideration of the sum above mentioned. The float was located upon what is now called the Searcy Springs, in the county of White, in the State of Arkansas, the numbers of which I do not now recollect, and where the town of Searcy, in that county, is now located, and generally known as the Sulphur Spring tract. The substance of the bond of McVey to William Pelham is recited in the act of legislature of Arkansas, passed and approved about the 26th of December, 1842. I recollect that a certified copy of the act of the legislature was transmitted to me with the original bond, with a request that I would see Eli Golden, the administrator of Allen McVey, and get a deed from him predicated upon said original bond to William Pelham, which request I was unable to attend to, and I got James E. Pelham to attend to it for me. The deed was executed and acknowledged before John Kyler, then an acting justice of the peace, after which it was recorded in the clerk's office in the county of White and returned to me; after which I enclosed the deed to William Pelham in a letter to Little Rock, Arkansas; the bond was sent by me to Eli Golden by James E. Pelham, and I have no further recollection of it. At the time the bond was executed, William Pelham paid McVey some money, but how much I do not now recollect, and also executed his note to McVey for fifty dollars. I paid Doctor Manly fifty dollars by request of McVey and William Pelham,

and I also paid his store account for the sum of thirty-two dollars and sixty-two cents, which amounts were paid for William Pelham for the purchase of the land before spoken of in this deposition. The balance of the purchase money was paid by William Pelham in cash at the time the bond was executed, but I do not recollect the precise amount. Eli Golden, who executed the deed to William Pelham, was the administrator of the estate of Allen McVey at the time said deed was executed. At the time the purchase was made of the float spoken of, I thought it was a very high price for a float. The store account above spoken of was an indebtedness of McVey to witness, and the fifty dollars paid by me to Doctor Manly was an indebtedness of McVey to Manly.

C. H. PELHAM.

Exhibit H.

This "Exhibit H" referred to in the plaintiffs' bill of exceptions, and is ordered to be copied therein as such, by the clerk. June 29, 1854.

BEAUFORT H. NEELY, *Judge.*

Deposition of J. E. Pelham.

On or about the 20th of January, A. D. 1843, being at that time in the town of Batesville, and at home, I received by mail a communication from William Pelham, who then resided at Little Rock, Arkansas, enclosing me a bond or covenant purporting to be executed on or about the 6th of January, A. D. 1834, by Allen McVey to William Pelham, by which bond or covenant the said Allen McVey bound himself, heirs and administrators, to execute to the said William Pelham a deed of conveyance for such lands as might be located by the said William Pelham with a military float in the name of the said Allen McVey, which military float the said Allen McVey in said bond or covenant acknowledged to have bargained or sold to the said William Pelham for the sum of one hundred and thirty dollars, or thereabouts, which sum he, the said Allen McVey, acknowledged in said bond or covenant to have received from the said William Pelham. The consideration mentioned in said bond or covenant for title as being paid by said William Pelham to the said Allen McVey for the said military float was the full market value for like claims, unlocated at that time in the State of Arkansas. Said bond or covenant for title was in the form and shape for such instruments in general use at that time in the State of Arkansas, and in my judgment, as formed at the time of reading it, it was a good bond for title; that to say, it was full in wording, complete in form, and executed for a valid consideration expressed on its face. In said communication from William Pelham I was made acquainted with the substance of an act of the Arkansas legislature, approved on or about the 26th of December, A. D. 1842, authorizing Eli Golden, as admin-

istrator of Allen McVey, deceased, to convey certain lands, and also informed that the said William Pelham had located the McVey military float on the northeast quarter of section ten in township seven north, in range seven west, in the county of White; and also requested to procure from the said Eli Golden, as administrator of Allen McVey, deceased, (who resided near me at that time,) a deed of conveyance to the said William Pelham for the northeast quarter of section ten in township seven north, in range seven west, drawn up in accordance with the bond or covenant for title.

In obedience with his request, and as the agent of the said William Pelham, and in compliance with the said act of the legislature, on the 25th day of January, A. D. 1843, I called on the said Eli Golden, in the county of Independence, and State of Arkansas, he, the said Eli Golden, being cognizant of the said act of the legislature referred to above, and knowing that the said William Pelham had located the McVey military float referred to above, on the northeast quarter of section ten in township seven north, in range seven west. I delivered to him, the said Eli Golden, as administrator of Allen McVey, deceas*t*, the bond or covenant for title executed by the said Allen McVey to the said William Pelham, and the identical bond or covenant for title referred to above and described by me, and obtained from him, the said Eli Golden, as administrator of Allen McVey, deceas*t*, a deed of conveyance to the said William Pelham for the northeast quarter of section ten in township seven north, in range seven west. Said deed of conveyance was worded in accordance with the tenor and intention of the bond or covenant for title delivered by me, as the agent of the said William Pelham, to the said Eli Golden, as administrator of Allen McVey, deceas*t*, and fulfilled the same, and was executed by the said Eli Golden as administrator of Allen McVey, deceas*t*, in satisfaction of said bond or covenant for title, and by authority of the act of the Legislature of the State of Arkansas, as referred to above by me.

The said deed of conveyance was executed by the said Eli Golden, as administrator of Allen McVey, deceas*t*, to the said William Pelham, on the 25th day of January, A. D. 1843, for the northeast quarter of section ten in township seven north, in range seven west, in the county of Independence, in the State of Arkansas, in my presence; and at the request of the said Eli Golden I subscribed myself as a witness; and also, at the request of the said Eli Golden and in my presence, Peter Lineburger did subscribe himself as a witness to the execution and delivery of the said deed of conveyance; and on the same day, in the county of Independence, and State of Arkansas, Eli Golden did acknowledge, as administrator of Allen McVey, deceased, before John Kyler, an acting justice of the peace in and for the county and State aforesaid, that

he had executed and delivered the said deed of conveyance for the use and purposes therein mentioned, and desired the said John Kyler, as justice of the peace aforesaid, to certify the same.

The said deed of conveyance is the only one executed in my presence, or witnessed by me, by the said Eli Golden as administrator of Allen McVey, deceased, or otherwise, to the said William Pelham.

On the day after the execution of the said deed of conveyance by the said Eli Golden, as administrator aforesaid, to the said William Pelham, I placed the same in the hands of the clerk of the circuit court for the county of White, in the State of Arkansas, for record, and before him made oath to the execution of the same by the said Eli Golden, as administrator aforesaid, as a subscribing witness; whereupon the same was placed upon record by said clerk, and subsequently I placed the same in the hands of William Pelham.

What was done with the said bond or covenant for title referred to above, by the said Eli Golden, after I delivered the same to him, I do not know. It is not in my possession, and I do not know where it is, and have no reason to believe it is in any other hands than the same Eli Golden. In reference to the original contract between the said William Pelham and the said Allen McVey, out of which the bond or covenant of title originated, I knew nothing at the time of the execution of the same. I learned subsequently from the said Allen McVey that he had sold his military float to the said William Pelham. During the spring and summer of the year 1835, the said Allen McVey frequently called on me for advice in reference to his business affairs, and he thus furnished me with a general knowledge of his debts and credits; but I did not at that time, before or after, learn from him or anybody else, or by any means, that the said William Pelham was indebted to him.

I do not know of any other matter or thing that is or may be of benefit or advantage to either party in this suit, or material to the same.

(Signed) JAMES E. PELHAM.

Exhibit I.

This is "Exhibit I," containing the depositions of Conway and Woodruff, which are made a part of plaintiffs' bill of exceptions, and are ordered to be copied into the same by the clerk. June 29, 1854.

BEAUFORT H. NEELY, *Judge.*

Deposition of Woodruff.

Deposition of William E. Woodruff, taken on the 11th day of August, 1852, who deposeth as follows, to wit:

I have been acting as land agent in Arkansas since the year 1824, and have resided at Little Rock during all that time. Ever since

istrator of Allen McVey, deceased, to convey certain lands, and also informed that the said William Pelham had located the McVey military float on the northeast quarter of section ten in township seven north, in range seven west, in the county of White; and also requested to procure from the said Eli Golden, as administrator of Allen McVey, deceased, (who resided near me at that time,) a deed of conveyance to the said William Pelham for the northeast quarter of section ten in township seven north, in range seven west, drawn up in accordance with the bond or covenant for title.

In obedience with his request, and as the agent of the said William Pelham, and in compliance with the said act of the legislature, on the 25th day of January, A. D. 1843, I called on the said Eli Golden, in the county of Independence, and State of Arkansas, he, the said Eli Golden, being cognizant of the said act of the legislature referred to above, and knowing that the said William Pelham had located the McVey military float referred to above, on the northeast quarter of section ten in township seven north, in range seven west. I delivered to him, the said Eli Golden, as administrator of Allen McVey, deceas*t*, the bond or covenant for title executed by the said Allen McVey to the said William Pelham, and the identical bond or covenant for title referred to above and described by me, and obtained from him, the said Eli Golden, as administrator of Allen McVey, deceas*t*, a deed of conveyance to the said William Pelham for the northeast quarter of section ten in township seven north, in range seven west. Said deed of conveyance was worded in accordance with the tenor and intention of the bond or covenant for title delivered by me, as the agent of the said William Pelham, to the said Eli Golden, as administrator of Allen McVey, deceas*t*, and fulfilled the same, and was executed by the said Eli Golden as administrator of Allen McVey, deceas*t*, in satisfaction of said bond or covenant for title, and by authority of the act of the Legislature of the State of Arkansas, as referred to above by me.

The said deed of conveyance was executed by the said Eli Golden, as administrator of Allen McVey, deceas*t*, to the said William Pelham, on the 25th day of January, A. D. 1843, for the northeast quarter of section ten in township seven north, in range seven west, in the county of Independence, in the State of Arkansas, in my presence; and at the request of the said Eli Golden I subscribed myself as a witness; and also, at the request of the said Eli Golden and in my presence, Peter Lineburger did subscribe himself as a witness to the execution and delivery of the said deed of conveyance; and on the same day, in the county of Independence, and State of Arkansas, Eli Golden did acknowledge, as administrator of Allen McVey, deceased, before John Kyler, an acting justice of the peace in and for the county and State aforesaid, that

he had executed and delivered the said deed of conveyance for the use and purposes therein mentioned, and desired the said John Kyler, as justice of the peace aforesaid, to certify the same.

The said deed of conveyance is the only one executed in my presence, or witnessed by me, by the said Eli Golden as administrator of Allen McVey, deceased, or otherwise, to the said William Pelham.

On the day after the execution of the said deed of conveyance by the said Eli Golden, as administrator aforesaid, to the said William Pelham, I placed the same in the hands of the clerk of the circuit court for the county of White, in the State of Arkansas, for record, and before him made oath to the execution of the same by the said Eli Golden, as administrator aforesaid, as a subscribing witness; whereupon the same was placed upon record by said clerk, and subsequently I placed the same in the hands of William Pelham.

What was done with the said bond or covenant for title referred to above, by the said Eli Golden, after I delivered the same to him, I do not know. It is not in my possession, and I do not know where it is, and have no reason to believe it is in any other hands than the same Eli Golden. In reference to the original contract between the said William Pelham and the said Allen McVey, out of which the bond or covenant of title originated, I knew nothing at the time of the execution of the same. I learned subsequently from the said Allen McVey that he had sold his military float to the said William Pelham. During the spring and summer of the year 1835, the said Allen McVey frequently called on me for advice in reference to his business affairs, and he thus furnished me with a general knowledge of his debts and credits; but I did not at that time, before or after, learn from him or anybody else, or by any means, that the said William Pelham was indebted to him.

I do not know of any other matter or thing that is or may be of benefit or advantage to either party in this suit, or material to the same.

(Signed) JAMES E. PELHAM.

Exhibit I.

This is "Exhibit I," containing the depositions of Conway and Woodruff, which are made a part of plaintiffs' bill of exceptions, and are ordered to be copied into the same by the clerk. June 29, 1854.

BEAUFORT H. NEELY, *Judge.*

Deposition of Woodruff.

Deposition of William E. Woodruff, taken on the 11th day of August, 1852, who deposeth as follows, to wit:

I have been acting as land agent in Arkansas since the year 1824, and have resided at Little Rock during all that time. Ever since

the year 1830 I have been more or less cognizant of the sale and location of military bounty floats to soldiers in late war with Great Britain. I have reference here to the floats allowed by several successive acts of Congress to soldiers emigrating to Arkansas, whose bounties allotted to them proved unfit for cultivation; in such case it has been customary in this State for the soldier or patentee to sell or transfer his right of float; such location had to be made in the name of the original patentee, and he usually gave a bond or covenant for title to the lands that might be located, to the person to whom he sold his claim, together with a power of attorney authorizing him to make the location in the name of the original patentee. The sale and transfer of such claims were made pretty much in the same way as the sale or transfer of claims under the act of Congress of 1828, commonly known as "Lovely donation claims," or any other floating claims authorized by act of Congress. According to my recollection the usual selling price of the military bounty floats referred to since the year 1830 has varied from one hundred to one hundred and fifty dollars. Further this deponent sayeth not.

WM. E. WOODRUFF.

Deposition of Conway.

Deposition of Elias N. Conway, taken on the 12th day of August, 1852, who deposeth as follows, to wit:

I have resided in the State of Arkansas ever since the year 1833. From the nature of my employments, of a public and private character, I have been more or less acquainted with land titles in Arkansas. My experience, however, of the class of claims known as military bounty floats, arising under the war with Great Britain, and the subsequent acts of Congress authorizing floats, has been limited. The sale and transfer of two such claims has come under my observation; I refer to cases where the lands originally drawn by the soldier and patented to him proved unfit for cultivation. In both of those instances the sale or transfer was made by a bond or covenant for title to the land that might be located with the float; such location being made in the name of the original patentee. So far as my observation has extended, and from what I have heard of such claims, the selling price of them has varied from one hundred to two hundred dollars. I sold one of these claims some time in the year 1848, which netted me one hundred and ninety dollars; for several years previous to the year 1848 they were not worth so much, according to my information. The value of such claims depended very much upon contingencies.

[Read.] (I recollect of having seen and examined the bond for title from Allen McVey (I think that was his name) to William Pelham for title to the land that might be selected and patented under his bounty float; the same claim was located on the northeast

quarter of section ten, township seven north, range seven west, [and after the location William Pelham proposed to sell it to me.] I think the bond referred to was before the legislature at the time the act was passed authorizing McVey's administrator to convey said tract to William Pelham. I do not know what ever became of said bond. The last I heard of it was from William Pelham; he told me he had sent it over to Independence county, Arkansas, to have the deed executed by the administrator, in accordance with the act of the legislature.)

[Read.] (I do not recollect the details of the bond referred to from McVey to Pelham, but I well recollect that the terms or condition of it was substantially this: that upon payment of the consideration named in the bond, and upon or after the issuance of the patent for the land that might be located with the float, McVey obligated himself to convey such land to William Pelham. I do not know anything further material, except that a good many circumstances have impressed the foregoing facts upon my memory.)

ELIAS N. CONWAY.

Exhibit K.

This is "Exhibit K" mentioned in, annexed to, and made a part of the plaintiffs' bill of exceptions. June 29th, 1854.

BEAUFORT H. NEELY, *Judge.*

Know all men by these presents, that I, Allen McVey, of the county of Independence and Territory of Arkansas, have nominated, constituted and appointed, and doth by these presents nominate, constitute and appoint William Pelham, of Pulaski county, my lawful attorney for me and in my name, place and stead, to locate my right to a military bounty tract of land, and to receive the patent from the land office so soon as it may be received at said office, and do all other acts, matters and things in relation thereto in the same manner that I might, could, should, would or ought to do, I was personally present, hereby ratifying and confirming every act, matter and thing which my said attorney may do in relation thereto.

In testimony whereof, I have hereunto set my hand and seal this sixth day of January, in the year of our Lord one thousand eight hundred and thirty-four.

ALLEN McVEY. [SEAL.]

Witness:
T. DICKINSON, JOHN RUDDLE.

TERRITORY OF ARKANSAS,
Independence County, ss.

This day personally appeared before me, Thomas P. Eskridge, a judge of the United superior court for said Territory, the above named Allen McVey, and acknowledged that he signed,

sealed, and delivered the foregoing power of attorney, for the uses and purposes therein specified. Given under my hand this 6th day of Jan'y, 1834.

THO. P. ESKRIDGE.

LAND OFFICE, LITTLE ROCK, *May 1st*, 1841.

On the twenty-seventh day of November, eighteen hundred and twenty, it appears from a patent filed in this office, and we so certify, that James Monroe, as President of the United States of America, granted unto one Allen McVey, then late a private in Baker's company first regiment of infantry, a certain tract of land, containing one hundred and sixty acres, being the southwest quarter of section thirty-five in township six north, of range fourteen west, in the tract appropriated for military bounties in Arkansas by the acts of Congress appropriating and granting land to the late army of the United States, passed on and since the sixth day of May, 1812. It further appears from papers filed in this office, and we so certify, that agreeably to the act of Congress of the 22d May, 1826, entitled An act authorizing certain soldiers in the late war to surrender the bounty lands drawn by them, and to locate others in lieu thereof, as revived by the act of the 27th May, 1840, the said Allen McVey has surrendered the said patent, and has fully relinquished all his title in and to the aforesaid tract of land unto the United States, and has fully complied with all the provisions of said last mentioned acts of Congress touching the said surrender and the said relinquishment; therefore the said Allen McVey is hereby authorized to locate another tract of land in any portion of the said tract appropriated as aforesaid for military bounties in Arkansas, in lieu of the said tract so surrendered and relinquished by him as aforesaid, agreeably to the provisions of the said last mentioned act of Congress.

Given under our hands, in pursuance of said acts of Congress, and of the regulations of the General Land Office of August, 1840, this 1st day of May, 1841, at the land office at Little Rock aforesaid.

P. T. CRUTCHFIELD, *Receiver.*
W. W. STEVENSON, *Register.*

To the Register of the Land Office at Little Rock, Ark's:

SIR: I hereby apply to enter the northeast quarter of section ten, township seven north of the base line, range seven west of the fifth principal meridian, in lieu of the southwest quarter of section thirty-five, township six north, in range fourteen west, granted to me by virtue of my services as a soldier in the late war, which I have surrendered to the United States by virtue of the acts of the 22d May, 1826, and revived by act of the 27th May, 1840, author-

No.

the
nor-

izing the soldiers in the late war to surrender the bounty lands drawn by them, and to locate others in lieu thereof.

ALLEN McVEY.
By WM. PELHAM, *Att'y in fact.*

Little Rock, March 28, 1842.

LAND OFFICE, LITTLE ROCK,
August 11*th*, 1851.

I hereby certify that the above and foregoing is a true copy of certain papers filed in my office, and that the certificate for said location was issued March 28, '42.

W. W. ADAMS, *Register.*

This is a copy of the map or plat of the town of Searcy referred to in the bill of exceptions herein.

R. S. BELL, *Clerk.*

A map of the town of Searcy, White county, Ark's, drawn by C. Langtree, for J. M. Moore, 1851.

[*Here follows map—original, page* 82.]

STATE OF ARKANSAS,
County of White, ss.

I, Robert S. Bell, clerk of the circuit court in and for the county of White aforesaid, do hereby certify that the preceding fifty-two pages contain a full and complete transcript of the record and proceedings in the case therein mentioned, to wit, the case of David Maxwell and others vs. Israel M. Moore and others, in ejectment.

In testimony whereof, I hereto set my hand and affix the seal of said court at office, this 8th day of December, A. D. 1854.

[L. S.]

R. S. BELL, *Clerk.*

Proceedings in Supreme Court.

And afterwards, to wit, at a supreme court of said State begun and held at the court-house in the city of Little Rock on the first Monday in January, A. D. 1855, were the following proceedings, had on the 3d day of February:

Filing Assignment and Joinder.

At this day come said appellants by their attorneys, and on motion it is ordered that their assignment of errors be filed; and thereupon the same is filed. And at the same time come said appellees by their attorneys, and on motion file their joinder in errors; which said assignment of errors is as follows:

Assignment of Errors.

The said appellants by attorney come and say, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit: that said circuit court suppressed and refused to permit to be read to the jury, on the trial of said cause, a part of the deposition of William Cook.

There is also error in this, to wit: that the said circuit court refused to permit the appellants to read in evidence to the jury, on the trial of said cause, the deeds, with the certificates of acknowledgment and registry thereto attached, of Nathan Francis and wife, and Samuel Smith and wife, and the depositions of said Francis and Smith.

There is also error in this, to wit: that said circuit court refused to permit the appellants to read in evidence to the jury, on the trial of said cause, the deed of William A. Lackey and wife, with the certificates of acknowledgment and registry.

There is also error in this, to wit: that said circuit court received in evidence as the foundation for the introduction of secondary evidence, and as sufficient to prove the existence and loss of said alleged title-bond from Allen McVey to William Pelham, the depositions of Charles H. Pelham, Kyler and Linebard, and the affidavit of Israel M. Moore, a copy of the letters of administration granted to Eli Golden on the estate of McVey, the deposition of said Golden, a deed executed by said Golden as such administrator to William Pelham, the depositions of James M. Curran, James W. McConaughey, William R. Miller, James E. Pelham, Elias N. Conway and William E. Woodruff, and the act of the general assembly of the State of Arkansas.

There is also error in this, to wit: that said circuit court permitted the appellees to read to the jury as evidence the letters of administration granted to Eli Golden on the estate of Allen McVey.

There is also error in this, to wit: that said circuit court permitted said appellees to read to the jury as evidence the deposition of said Eli Golden.

There is also error in this, to wit: that said circuit court permitted said appellees to read to the jury as evidence the depositions of John Kyler, Peter Linburg, Charles H. Pelham and James E. Pelham, and each of them.

There is also error in this, to wit: that said circuit court permitted said appellees to read to the jury as evidence the deed from Eli Golden, as administrator, to William Pelham.

There is also error in this, to wit: that said circuit court refused to exclude from the jury the deposition of said Golden, and to instruct the jury to totally disregard it.

There is also error in this, to wit: that said circuit court permitted the appellees to read to the jury as evidence said act of the general assembly.

There is also error in this, to wit: that said circuit court permitted the appellees to read to the jury as evidence a part of the deposition of Elias N. Conway.

There is also error in this, to wit: that said circuit court permitted the appellees to read as evidence to the jury the paper certified by and under the signature of William W. Adams, register of the land office at Little Rock.

There is also error in this, to wit: that said circuit court permitted the appellees to read to the jury as evidence the deed of conveyance from William Pelham to said Israel M. Moore.

There is also error in this, to wit: that said circuit court permitted the said appellees to prove the value of the tract of land in controversy at the commencement of this suit.

There is also error in this, to wit: that said circuit court refused to give to the jury the second, fourth, fifteenth and sixteenth instructions asked for by the appellants.

There is also error in this, to wit: that said circuit court gave to the jury the said instruction asked for by the appellees.

There is also error in this, to wit: that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for said appellees and against the appellants; whereas, by the laws of the land, said judgment ought to have been given for the appellants and against the appellees. And the said appellants pray that the judgment aforesaid for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for naught, and that they may be restored to all things which they have lost by occasion of said judgment, &c.

A. FOWLER,
Attorney for the Appellants.

And said joinder in errors is as follows:

Joinder.

Come the said defendant by attorney and says, that in the record and proceedings aforesaid, and in the rendering of the judgment aforesaid, there is no error; wherefore he prays that the same may in all things be affirmed, &c.

G. C. WATKINS & GEO. A. GALLAGHER,
Atty's for Def's.

And afterwards, to wit, on the 6th day of February of said term, were the following proceedings:

At this day come said appellants and appellees by their attorneys, and this cause is continued until the next term of this court.

And afterwards, at a term of said supreme court begun and held on the first Monday in July, A. D. 1855, were the following proceedings on the 28th day of July:

Submission.

At this day come said appellants and appellees by their attorneys, and this cause is submitted on the briefs filed, and by the court taken under advisement.

And afterwards, to wit, at a supreme court of said State begun and held on the said first Monday in January, A. D. 1857, to which term this cause was continued by operation of law, and on the 7th day of March, were the following proceedings, to wit:

Suggestion of Walker's death, &c.

And now come said appellant, David Maxwell and said Mary, by their attorney, and suggest to the court, that since the submission of this cause, the said Alexander S. hath departed this life, leaving said Mary his widow, and that she hath since intermarried with Thomas Watkins, all which is by said appellees, by their attorney, admitted to be true; whereupon, on motion, it is ordered that said Thomas Watkins and Mary his wife be admitted appellants to prosecute this appeal, and they appear herein by attorney.

Final Judgment.

And this cause having been heard upon the transcript of the record of the circuit court of White county, and having been argued by counsel, it is the opinion of this court that there is no error in the proceedings and judgment of said circuit court in this cause. It is therefore considered by the court that the judgment of said circuit court in this cause rendered be and the same is hereby in all things affirmed with costs. It is further considered that said appellees recover of said appellants all their costs in this court in this cause expended, and have execution thereof.

Filing copy of Writ of Error and Bond.

And afterwards, to wit, on the 17th day of March, A. D. 1857, came the said appellants, to wit, David Maxwell, Thomas Watkins and Mary his wife, and presented a writ of error to the clerk of said court, duly allowed by the chief justice thereof, commanding that the record and proceedings in said cause be sent to the Supreme Court of the United States, and deposited a copy of said writ of error for said appellees, and at the same time filed a bond in error, which is the following words:

Know all men by these presents, that we, David Maxwell and Thomas Watkins as principals, and Jesse S. Tillman as sureties, are held and firmly bound unto Israel M. Moore, Madison M. Morris, Henry Morris, James P. Kellem, John F. Black, James F. Batte and William M. Craig, obligees herein, in the full and just sum of five hundred dollars, to be paid them, the said obligees, their certain attorney, executors, administrators or assignors; to

which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 14th day of March, A. D. 1857. Whereas lately, at a supreme court of the State of Arkansas, in a suit depending in the said court between the said David Maxwell and Thomas Watkins and his wife Mary Watkins, appellants, against the above named obligees, a judgment was rendered against the said Maxwell and Watkins and his wife, in favor of the said obligees, and the said Maxwell and Watkins and wife being about to obtain a writ of error, and file a copy thereof in the clerk's office of the said court, to reverse the said judgment in the said suit, and a citation directed to the said obligees, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington city, on the first Monday of December next: Now the condition of the above obligation is such, that if the said Maxwell and Watkins and wife shall prosecute their said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

DAVID MAXWELL, [SEAL.]
THOS. WATKINS, [SEAL.]
JESSE S. TILLMAN. [SEAL.]

Signed, sealed and delivered in presence of us—
B. D. TURNER,
WM. G. TURNER.
Approved.

E. H. ENGLISH,
Ch. J. Sup. Court Ark.

STATE OF ARKANSAS,
In the Supreme Court.

In testimony that the foregoing eighty-nine pages contain a full, true and complete transcript of the record and proceedings in said cause in said supreme court, except the opinion of the court and briefs of counsel, I, Luke E. Barber, clerk of said supreme court, have hereto set my hand and affixed the seal of said court at my office in the city of Little Rock, this 8 day of September, A. D. 1857.

[SEAL.] L. E. BARBER, *Clerk.*

$39 55.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the judges of the Supreme Court of the State of Arkansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said Supreme Court,

before you, between David Maxwell, and Thomas Watkins, and Mary Watkins his wife, plaintiffs and appellants, and Israel M. Moore, Madison M. Morris, Henry Morris, James P. Kellem, John F. Black, James F. Batte, and William M. Craig, defendants and appellees, manifest error has intervened and happened, to the great damage of the said plaintiffs, as by their complaint appears; and we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court of the United States, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right and according to the laws of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this sixteenth day of March, in the year of our Lord one thousand eight hundred and fifty-seven.

WM. FIELD, *Clerk.*

Allowed by

E. H. ENGLISH,
Ch. J. Sup. Court Ark.

STATE OF ARKANSAS,
In the Supreme Court, set:

I, Luke E. Barber, clerk of the supreme court of the State of Arkansas, do hereby certify that, in obedience to the command of the foregoing writ and the allowance thereof by the chief justice of our said supreme court, I have made out and certified a full, true and complete transcript of the record and proceedings in the case therein mentioned, except as in the certificate thereof is excepted, which is hereto attached, and with this writ of error transmitted to the Supreme Court of the United States, &c.

In testimony whereof I hereto set my hand as clerk of our said supreme court, and affix the seal thereof, at my office in Little Rock, this 8th day of September, A. D. 1857. [L. S.]

L. E. BARBER, *Clerk.*

The United States of America, to Israel M. Moore, Madison M. Morris, Henry Morris, James P. Kellem, John F. Black, James F. Batte, and William M. Craig, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington city, on the first Monday of December next, pursuant to a writ of

error filed in the clerk's office of the supreme court of the State of Arkansas, wherein David Maxwell, and Thomas Watkins, and Mary Watkins his wife, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Elbert H. English, chief justice of the said supreme court of the State of Arkansas, this sixteenth day of March, in the year of our Lord one thousand eight hundred and fifty-seven.

E. H. ENGLISH.

LITTLE ROCK, ARKANSAS,
April 25th, 1857.

We acknowledge due service of this citation.

WATKINS & GALLAGHER,
Solicitors for all the defendants in error.

Filed 12th December, 1857.